

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 13TH JUNE

2001 AT 11AM.

CONTINUATION OF EXAMINATION OF MR. JIM MILEY BY

MR. HEALY:

MR. HEALY: Now, yesterday I think we were going through the different classes of file notes or memoranda that were made in this case and we divided them up into your handwritten memoranda, then your typed file notes, and then the other documentation concerns mainly file notes generated in the course of dealings with the party solicitors, isn't that right?

A. That's right.

Q. We had finished the handwritten memoranda. I want to go on to your typewritten file notes, which I think there are four particularly relevant, or three which are particularly relevant.

A. Mm-hmm.

Q. I want to ask you a question about them in general, but I'll refer to the first file note which is dated 13/2/1998. Do you see that?

A. Yes.

Q. Now, that document is dated 13/2 and signed the 14/2, and I take it that that is because it is generated, typed up by somebody, signed the date you signed, is that right?

A. No, I typed it myself.

Q. You typed it yourself. Maybe you'd explain to me the two dates?

A. I'd said that my administrative skills are not as good as those of my secretary, so obviously it was a typing error. One or other date, so I either would have typed it on the 13th or the 14th.

Q. Or maybe you started it on the 13th and finished it on the 14th?

A. I am not quite sure. But certain, I know those I would say all of those memos I typed myself.

Q. I see. Can you tell me when you would have typed the memos, dealing with this one?

A. Possibly the 13th and the 14th, but I would say it's more likely the 14th, if I signed it, I would have been aware of the date underneath when I signed it, so I would say that would be the relevant date.

Q. This may be of some relevance when we come to some of the other file memos at the moment. I am not sure it's of particular relevance in relation to this one.

Here you are referring to your dealings initially with Mr. Fintan Drury. You say on the 11/2/98, "I was contacted by Public Affairs consultant Fintan Drury who requested a meeting on ... with a legal representative to be present on either side. Mr. Drury made it clear that he wished the meeting to be privileged. I agreed to have such a meeting at which I would represent Fine Gael along with the Party's solicitor, Kevin O'Higgins.

The meeting took place in my office at 51 Upper Mount Street on the evening of the 13th February, at 6.30pm. Present were myself, Kevin O'Higgins, Fintan Drury and Kevin O'Brien of Kilroy solicitors. FD - " Fintan Drury - "and Kevin O'Brien revealed that they were representing Telenor and proceeded to outline the following to us.

They said that Denis O'Brien of ESAT approached their client with whom he was in partnership in the autumn/winter of 1995 saying he wished to make a contribution to a Fine Gael fundraising dinner in New York. He indicated he wished to buy two tables at \$25,000 per table. He asked Telenor to pay the money to David Austin who was organising the dinner on behalf of Fine Gael. He said he wished to do it in this way in order to ensure confidentiality. The \$50,000 was, according to Fintan Drury and Kevin O'Brien, eventually paid by Telenor to David Austin in January of 1996.

Fintan Drury and Kevin O'Brien indicated that an equivalent sum was passed from Denis O'Brien to Telenor. Telenor subsequently requested David Austin to issue an invoice for the amount paid. David Austin, they said, issued an invoice for \$50,000 US for consultancy fees. It was not clear from the discussion when precisely this invoice was issued but FD and KOB did reveal that the request for the invoice

arose in late 1997 when the shares/bonds issue and the due diligence process for the same was being undertaken by ESAT Telenor. KOB read a note to the meeting which he said was written by David Austin. FD/KOB indicated that they believed that David Austin may have held the money for sometime before passing it on to FG and they understood that he had originally lodged the money into an account in Jersey. FD and KOB said that Telenor were now concerned that this matter may arise in the context of the Moriarty Tribunal. They were seeking confirmation from FG that the Party had in fact received the money. This would mean that Telenor would not be required to report the information to the Tribunal as it would not be within the Terms of Reference of the Tribunal. In other words, they said Telenor needed verification that Michael Lowry or his companies did not receive/benefit from this alleged donation. JM and KOH sought clarification on various points. JM said he was not in a position to verify if in fact such a donation had been received. He noted the details outlined by FD and KOB were new information as far as he was concerned as the accounting officer of the Party. Jim Miley and Kevin O'Higgins sought clarification on whether the issuance of an invoice by David Austin to Telenor was on the request of Telenor or suggested by David Austin. FD/KOB were unable to confirm who had initiated this idea. JM/KOH agreed to

investigate the matter and promised to revert to FD/KOB as soon as possible once the background to the matter had been clarified.

Signed Jim Miley."

Now, did you make any handwritten notes from which you wrote this record of your dealings with Mr. O' Higgins and our dealings with Mr. Drury and Mr. O'Brien?

A. No, I didn't. This note would have been written from memory.

Q. And I think you'll agree that some of the sequences do not appear to be correct in the light of information that has come to hand since 1998.

A. In what respect?

Q. You say, "Telenor subsequently requested David Austin to issue an invoice for the amount paid. David Austin they said issued an invoice for \$50,000 for consultancy fees. It was not clear from the discussion when precisely this invoice was issued, but FD and KOB did reveal that the request for the invoice arose in late 1997 when a shares/bonds issue and the due diligence process for the same was... KOB read a note to the meeting which he said was written by David Austin."

Now, you think that that note was the note that we had on the overhead projector yesterday, isn't that right?

A. Yes, that's right.

Q. At that meeting were you provided with the invoices

with which I think you were subsequently provided certainly by somebody, but did you see them at that meeting?

A. Oh, no, we did not. No. No. I was - to my recollection, I don't think I was ever supplied with those invoices. It's only in recent times relevant to my appearance here that I would have seen copies of those through our solicitor.

CHAIRMAN: In essence, Mr. Miley, this was the first time that you had conveyed to you the substantive, perhaps not the exact facts, in relation to the donation that you had up to then believed to have been a private gift from David Austin?

A. Absolutely, Sir, yeah.

MR. HEALY: Then your next memorandum is dated 16/2/98. You say you "Spoke to John Bruton by telephone on Monday, 16th February, 1998, and informed him of the information supplied by Fintan Drury and Kevin O'Brien representing Telenor in the meeting of the previous Friday, the 13/2/1998. Informed him that preliminary checks indicated that a donation of $\text{€}33,000$ had been received from David Austin on May 6th, 1997, and that it would seem that this donation may in fact be one and the same as the donation of \$50,000 US which has been referred to by FD/KOB." Meaning Fintan Drury and KOB, Kevin O'Brien." Told him that I had yet to

contact David Austin to confirm that this was in fact the case.

JB was very alarmed and distressed at the information.

He instructed that the money be returned immediately.

He said that he had been made aware a long time ago by

David Austin that such a donation may have been

available, but he had indicated firmly that any such

donation be -" and you have in quotation marks, "'-

left where it was.' He said he would not have

authorised such a donation by the Party -" sorry. "He

said he would not have authorised the receipt of such a

donation by the Party had he known about it and again

insisted that it be returned immediately."

You say, "I informed John Bruton that I had understood

that the donation received from David Austin in 1997

had been a personal contribution. I pointed to the

fact that the Party needed to establish the full facts

relating to this donation in the light of the

information that has now become available. I

indicated that I would attempt to speak with David

Austin as soon as possible and arrange to have the

money repaid. John Bruton said the matter should be

sorted out without delay with a cheque issued

regardless of how large the contribution had been. He

said the cheque should be issued to David Austin in the

event that it could not be clarified as to who

precisely the original donor may have been."

Now, again I take it you typed up that file note after your conversation with John Bruton?

A. Yes, I did.

Q. I am just interested that you put the words "Left where it was" in quotation marks. Had you some reason for doing that?

A. Well, I think the Party leader himself specifically drew my attention to that, that he recalled saying that to David Austin, and he would have repeated that to me in the course of that telephone conversation and was pretty adamant that those were the sort of words that he used.

Q. What did you understand those words to mean?

A. I understood that it was to be - not to be accepted by the Party, and that it was to be, you know, left wherever it was at that time, which the Party leader understood to be under the control of the donor.

Q. Your next memorandum is dated 13/2/1998. Now, in order to put this memorandum in context, between the date of your discussion with John Bruton you had had a phone conversation with Mr. David Austin, with the late Mr. David Austin, on the 17th February of 1998, and we have seen a handwritten memorandum relating to that.

You had had another telephone conversation on the 23rd February, 1998, of which we also have a handwritten memorandum, and then a further conversation, again on

the 23rd, of which we also have a handwritten memorandum.

A. Correct, yeah.

Q. And now we have a file note as well, also dated 23/2/1998 dealing with two telephone conversations with David Austin. I don't know if you were here yesterday when apparent differences between your file note and your handwritten notes were mentioned in the course of the evidence of Mr. O'Brien. You may want to comment on those in a moment, as soon as I have gone through the memorandum.

The file note, rather, or memorandum says, "Spoke with David Austin on the 17/2/1998 and again on the 23/2/1998. David Austin confirmed that he had approached Denis O'Brien to request a contribution for Fine Gael in the context of the Fine Gael fundraising dinner in New York in November of 1995. He said that DOB indicated that he wished to have the donation paid via Telenor in order to ensure confidentiality. He then made arrangements with Telenor to have the money paid to him, and he held the money until May of 1997 when he passed it on to Fine Gael.

DA said he was contacted by Telenor sometime last year and asked to confirm that he had in fact passed the money to Fine Gael, and he confirmed in writing that he had. He said he remembered mentioning the fact that

such a donation might be available to John Bruton, but that John Bruton had expressed misgivings about receiving such a donation. He said John Bruton would never have known that the payment had in fact been made. He advised against giving the money back on the basis that he believed that there was nothing wrong with the donation in the first place, but he said it was really up to the Party to make the decision as to whether to return the donation or not.

DA confirmed that the donation of $\text{€}233,000$ that he made in early May of 1997 was that which he had received originally from Telenor with interest exchange rates taken into account. He agreed that I had not been made aware of the original source of the donation.

Frank Conroy, who passed on the cheque from DA, also confirmed this by telephone on the 23/2/1998. DA was also emphatic that he had no discussions with Michael Lowry on the matter. He had nothing whatsoever to do with this he said."

Now, looking at that file note, it seems to contain, perhaps in tidier form, much of what you had noted in your handwritten notes of the 17th and the 23rd, but if you look at the first paragraph, you say that, "David Austin confirmed that he had approached Denis O'Brien to request a contribution for Fine Gael in the context of the FG fundraising dinner in New York in photograph

of 1995."

You go on to say, "He said that DOB indicated that he wished to have the donation paid via Telenor to ensure confidentiality. He then made arrangements with Telenor to have the money paid to him and held the money until May of 1997 when he passed it on to Fine Gael."

Now, would you agree with me that those that account of the circumstances in which the donation was first sought and was in fact initiated, do not appear in just those terms in your handwritten note or notes?

A. They don't, no. But you know, I think the purpose of my writing this file memo was that I'd had, at that stage, three telephone conversations with David Austin.

I think, as I noted yesterday, my handwritten notes were, you know, key point notes from the critical issues arising out of it, and I suppose, for the record, I wanted to just complete the file with a summary memo that would have included all the conversations. That was the purpose of writing that note.

Q. You are aware of the issues that have now arisen in the context of the Tribunal's inquiry into this matter, and one of which is whether this was a contribution to be made by Mr. O'Brien?

A. Yes.

Q. Or a company with which he was associated, or whether in fact it was a donation which Mr. O'Brien had no interest in making but which he passed on to Telenor?

A. Yes.

Q. Now, you'd agree with me that there is a difference between that account of what happened and what is stated in your file note.

A. It's more that in my file note, that is probably absent rather than there being a difference.

Q. Lest there be any doubt about it, what Mr. O'Brien is saying, that he was asked to make a contribution, and he felt it was inappropriate that he, meaning ESAT Telecom, or in fact another company with which he was associated, ESAT Digifone, should make it, and he simply passed on the information with, I suppose, at the very best one could say a recommendation to Telenor. That's what he says. Now, what you are saying is that he indicated, meaning Mr. O'Brien indicated Mr. Austin, you say, told you that Mr. O'Brien indicated that he wished to have the donation paid via Telenor. Do you understand the difference?

A. I do indeed. And that's what's in the note, yeah.

Q. And do you have a recollection of that being a significant issue at the time that you spoke to Mr. Austin?

A. If you are asking me here and now to recollect what

Mr. Austin said to me in the telephone conversation, I would have grave difficulty in recalling the precise sort of words he used. But given that I wrote this memo on the day of the last two telephone conversations, probably in the minutes or hours after those conversations, I am inclined to rely on what's in the file memo, so I would confirm to you that what's in that file memo is accurate.

Q. Now, the next set of memos are memos which were generated in the course of various dealings you and others had with the Fine Gael solicitors and the solicitors for Telenor in February and March of 1998, isn't that right?

A. That's right, yeah.

Q. And the first of these is a memorandum of Mr. Kevin O'Higgins, dated 12th February of 1998. Again, to put this in context, you were contacted on the 11th February by Mr. Fintan Drury?

A. Yes.

Q. And we have already seen your own file note about that.

A. Yeah.

Q. You are now having a discussion with Mr. O' Higgins on the 12th, and we know that on the 13th you and Mr. O'Higgins had a meeting with Mr. Drury?

A. That's right.

Q. At this stage you are simply canvassing the position with Mr. O' Higgins in anticipation of a meeting you

are going to have the following day, I think?

A. That's right. I had been asked to have a meeting in privilege.

Q. And you felt you should deal with your own solicitors, as there was going to be some legal complexion to this meeting?

A. It was the first and only time in my life that I had been asked to have that kind of meeting, so I thought it prudent to ask the advice of the solicitor as to what exactly that meant.

Q. I see. You say, "Lengthy tele -" I beg your pardon.

This is not your note. This is

Mr. O'Higgins' note. He said, "Lengthy telephone discussion with Jim Miley, over 45 minutes, when he brought me fully up to date in relation to the Telenor issues. He had further meetings with John Bruton and has spoken with David Austin, who is now in France.

The monies were in the name of a Frank Conroy, who is another fundraiser " Sorry. "The monies were in the name of a Frank Conroy, who is another fundraiser, and then endorsed over from a resident bank account of David Austin. Jim has concerns that there is some political stoking up going on and is mistrustful of the role of Fintan Drury."

I should say, in fairness to Mr. Drury

A. Sorry, I don't have a copy of that in front of me, but

I can read it. It seems to me the date in that is out of sequence.

Q. Yes, because of your reference to a telephone conversation to Mr. Austin, is it?

A. It's dated 12th February, which is prior to any of these events happening.

Q. It's not prior to your 11th February conversation. Your first contact was the 11th February.

A. I see what you mean, yeah.

Q. There is something in the dates that we may have to come back to.

A. Okay.

Q. But what is what seems to be clear, we can clarify these dates if necessary, from your own file note is that you were first contacted on the 11th February?

A. That's right.

Q. You had a meeting on the 13th February?

A. That's right.

Q. You say, "Jim has concerns that there is some political "

A. Sorry, I still believe that there must be a date issue on this memo.

Q. I think there may be. We'll just read it first.

A. Because I had not spoken to John Bruton at all at that stage on that issue.

Q. I appreciate that. We'll just read it first. And I can understand your concern.

"Mr. O' Higgins says Jim has concerns there is some political stoking up going on and is mistrustful of the role of Fintan Drury. David Austin has no recollection as to whether or not he had acquired that the payment be documented by way of an invoice for him for consultancy services. Jim is aware from another source that the matter is causing some concern in Telenor. He hasn't as yet spoken about Denis O'Brien, but agrees that it must likely be of considerable concern to him. We wondered about the disappointed consortium and whether or not they were involved in the matter. It would be worth knowing whether an Order for Discovery had been made by Moriarty against Telenor. One thing, however, is certain, and that is that the money will be refunded and the only issue is as to whom we do this. Do we give it back to David Austin or do we give it to Telenor or indeed Denis O'Brien?"

Now, as you pointed out, this memorandum suggests that you had had a meeting with John Bruton and that you had spoken to David Austin, and if that is so, it is out of sequence with the dates as you understand them. Well, it may be that Mr. O' Higgins will be able to help us in relation to it, but am I right in thinking that you must have had a meeting or a discussion with Mr. O' Higgins before you ultimately met with him and with Mr. Drury and with O'Brien?

A. Yes, I did. Yes. I would guess that that's more

likely to be the 12th March, rather than the 12th

February. It would seem to fit better in sequence.

Q. Because it seems to be relating to all of the past events?

A. Yes. Yes.

Q. Well, if we go on to the next memorandum, which is the 13th February, and this would certainly appear to have been accurately dated.

CHAIRMAN: I suppose, in fairness, Mr. Healy, towards Mr. Drury, we ought to clarify that there is no remote implication being cast upon him. Would it be fair to say, in the somewhat fevered atmosphere that was engendered by these circumstances, you may have adverted to possible involvement with other clients that Mr. Drury had had and taken an initially somewhat defensive attitude?

A. Absolutely, Sir. I suppose one learns in politics to be suspicious of everything. Having said that, I know Fintan Drury to be one of the finest practitioners of PR in this town.

MR. HEALY: Your next or the next memorandum from Mr. O' Higgins refers to the meeting in Fine Gael headquarters. He says, "Attending in Fine Gael headquarters for a prearranged meeting regarding an issue of some importance and relating to a possible involvement on our part in the Moriarty Tribunal.

On the previous Wednesday a Public Relations consultant, Fintan Drury, called in to see Jim Miley and pointed out that he had information which would suggest a possible involvement for the Party. A meeting was then arranged for Friday evening in which both Mr. Drury, Jim Miley, Kevin O'Brien, solicitor of Kilroy's, and myself were in attendance."

Just to clarify one matter at this point.

Mr. O' Higgins refers to the contact you had with Mr. Drury in which he mentioned to you that he had information. And Mr. O' Higgins goes on to say, "Information which would suggest a possible involvement for the Party in the Moriarty Tribunal."

Did Mr. Drury come to you on the basis that he had information which might involve or might suggest a possible involvement for the Party with the Moriarty Tribunal, or is it in fact the case, in fairness to Mr. Drury and his client, that they came to you seeking information about the whereabouts of a contribution and that that information itself may have prompted you and Mr. O' Higgins to think of a potential involvement with the Moriarty Tribunal?

A. Yeah, I think that would be the case. I think he I don't think he identified the name of the client in the telephone conversation. I am not a hundred

percent I am pretty sure of that. But yeah, it was in the context of his client having information which they felt may be of relevance to the Moriarty Tribunal and on which they required some clarification from Fine Gael. That was the context he put it to me.

Q. But they were what they wished to clarify is whether, as they saw it, a certain contribution had been received by Fine Gael, and if it had been received by Fine Gael, their impression was that they wouldn't have an obligation to furnish information to the Moriarty Tribunal?

A. That's correct. They made that clear at the meeting, not in the telephone conversation beforehand.

Q. "The meeting was off the record and we were asked not to take written notes. Mr. O'Brien outlined the issue which concerned the Norwegian State telecommunications company, Telenor. This company has a 45% stake in ESAT Digifone of which Denis O'Brien also has another 45%. ESAT was of course awarded the telecommunications licence by the last government. It seems in or around October of 1995 and subsequent to the awarding of the licence, Denis O'Brien indicated a desire on the part of ESAT to make a contribution to the Party by way of funding the purchase of two tables at a fundraising dinner which was to be held in America. According to Mr. O'Brien's commentary, it was felt that it would be appropriate that neither ESAT

nor Digifone or Denis O'Brien were not seen to have made the contribution and, accordingly, he asked the Norwegian partner, Telenor, to make the contribution. The cost was \$50,000 and the arrangements were put in place by the fundraiser David T Austin and Telenor.

What becomes more intriguing is the manner by which the payment was made, in that it was paid into an account of David Austin in the Bank of Ireland, Jersey, in January of 1996. Telenor were reimbursed the monies by ESAT and no issue turns on that point. However, according to Mr. O'Brien's, solicitor, Telenor have now become most concerned about the possibility that this matter will come under scrutiny by Moriarty unless certain confirmations can be obtained from Fine Gael. In particular, they refer to the Terms of Reference and Paragraph (f) in particular. They feel and have obtained the advices of senior counsel that the Tribunal being charged with the responsibility for identifying the source of any money held, and then they quote from the Terms of Reference, 'In any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr. Lowry or for the benefit or in the name of a connected person within the meaning of the Ethics and Public Office Act of 1995' could imply a connection to Fine Gael unless the Party can confirm, (a), that it received the money, and (b), that Mr. Lowry had no connection whatsoever with the

account.

Verification of this would be via letter. We questioned them on the issue of confidentiality and they acknowledged it would be their desire to respect confidentiality save as may be prescribed by law.

We listened rather than make any commentary, although I did point out that Paragraph (f) in the Terms of Reference was dealing with named accounts inter alia, in the Isle of Man and not Jersey, although I accepted that the above extract could potentially extend this meaning."

This is Mr. O' Higgins's own canvassing of the legal aspects of the matter.

"Jim Miley pointed out that he would obviously have to carry out a fair bit of checking and this would take a number of days. One worrying aspect for both Mr. Austin and/or Telenor was the fact that Mr. Austin was making arrangements for the payment of the money. He was asked by Telenor to provide written documentation to back up the payment. This was done by way of an invoice drawn in the name of Mr. Austin 'For consultancy services'. Kevin O'Brien's solicitor would not say and neither did or nor Mr. Drury know whether this was at the instigation of Telenor. The meeting then concluded.

On reflection I spoke with Jim Miley following my discussion on the issue on Monday 16th with the Party leader is the fact that Mr. Austin ostensibly made the contribution as a personal contribution. We were not then to know as to the actual circumstances which had come to light only following the information brought to our attention at this meeting.

Jim Miley and myself regretted the involvement of Fintan Drury who is known to be a government adviser and whether he can be relied on to keep the lid on matters may be questionable. Obviously we can seek a confidentiality undertaking from Telenor and ideally from Fintan Drury also."

I should say once again that these may be political tensions that, to some extent, formed the views that would have been expressed about the people carrying this information, but they ultimately proved groundless because Mr. Drury was not involved in the matter subsequently?

A. Oh, absolutely, yeah. Just concerns arising out of potential perceived conflicts of interests, which was understandable, I suppose.

Q. The next memorandum from Mr. O' Higgins doesn't seem to be of any real importance. There is a memorandum of the 2nd March 1998.

It's Mr. O' Higgins' note of a conversation with Mr. O'Brien, solicitor, who says, "I rang Kevin O'Brien, solicitor, having missed him on Friday last and spoke to him about the letter which we were just on the verge of sending. I spoke off the record to him about the Fintan Drury situation and he understands and respects our predicament. He stressed that the confidential aspect was as much in their interest as ours. He understood the political sensitivity and the fact that Fintan Drury has his hand in both camps so to speak. His clients know of Mr. Drury's other political retainers. Being aware of Telenor's desire for confidentiality they felt to that extent he was compromised and would be muted from disclosure.

He seemed to appreciate the political sensitivity, and hopefully this will ensure that his clients do not share this information with Mr. Drury.

He is anxious to see a draft of our letter beforehand but I wasn't interested in chopping and changing a letter to their tune. I told him that we had carefully assessed and double checked the whole matter and this involved extensive discussions with David Austin. The General Secretary had believed when the contribution came in that it was a personal contribution. Now that we know that this was not so, we shall be duty-bound to decline the contribution, not so much that it came from

Telenor, but the actual circumstances relating to the donation had not then been apparent to the General Secretary. He seemed to be surprised by this and commented that as David Austin was a known political fundraiser for the Party, but would not have been apparent to the General Secretary, that this was a political contribution from someone.

I advised him that this was not so and the General Secretary's clear impression at the time was as I stated."

Then the next document is a document which is the letter which has clearly been referred to, and we have already mentioned that letter at various points in the course of the evidence at these sittings.

I think the only paragraphs I need mention at this time, for the sake of the narrative, are the last three or four paragraphs where Mr. O' Higgins says, "As a result of your intervention" referring to Mr. O'Brien's intervention on behalf of Telenor "Fine Gael is now aware for the first time as to the origin and mechanism by which the contribution in the name of David Austin was made. Had the totality of information been available to the Party, namely, the circuitous manner by which the contribution was routed, then such contribution would not have been acceptable

to Fine Gael.

Subject to normal ethical contributions, it is Fine Gael policy to accept contributions directly from donors, or where contributions are made through intermediaries, only where the Party has established clearly the identity of the true donor at the time of the receipt of the contribution. As a result of the information given to us by your client, Fine Gael is now aware that these conditions were not met in the case of this donation.

If a contribution had been offered directly by Telenor/ESAT, then Fine Gael, having considered the circumstances applicable, if any, would then have had to decide whether to accept the contribution or to decline it at that time. However, in the light of circumstances prevailing in the case of this contribution, we are returning the donation and enclose cheque payable to Telenor in the amount of €23,000.

When you requested a meeting with us on the 13th February last, you made it clear that you expected absolute confidentiality. Apart from what was necessitated by the inquiries which you requested us to make, we continue to respect that confidentiality on the basis that it will be reciprocated by your client, its servants or agents and by all those whom you have consulted in the matter."

Then there was further correspondence with Kilroy's and Kilroy's, if you like, harked back to one of the issues which they had ventilated with you in your first meetings with them. In their letter of the 6th March, 1998, they stated in the well, sorry. Before I open that meeting, I think open that letter again, it might make more sense if I refer to the memorandum of the 5th March, which is the next document in the book. This is Mr. O' Higgins memorandum of a conversation with Mr. O'Brien on the 5th March, 1998, in which he says, "Receiving a call from Kevin O'Brien solicitor when he acknowledged our letter. They want us to be able to confirm categorically that the monies were never lodged into any other account between its initial lodgment into the Jersey account and its arrival in Mount Street. Effectively, their concern is that there may have been a lodgment into an intermediate account into which Michael Lowry may have had a connection. If this was so, it would bring it within the Moriarty remit. He has a 'tongue and cheek letter' coming back to me in reply, but he will be holding off sending it until he has got this confirmation. I did remind him that our letters spoke about the David Austin account, about being one in which he was the sole and exclusive controller. However, I do take their point that it is

theoretically possible for the monies to have gone into intermediate account between then and its arrival in Mount Street on the 6th May of 1997."

Now, the letter from Kilroy's of the 6th March has already been, as I said, opened. I just want to go to the last few paragraphs.

"Our clients contacted you through our offices in the context of the Moriarty Tribunal" is what Mr. O'Brien, from Kilroy's is saying to Mr. O' Higgins. "Our clients regard your letter of the 2nd March as confirming that the contribution was received by and went into the Fine Gael Party General Party Fund through accounts owned and controlled by David FT Austin. Our clients also need you to confirm that Mr. Michael Lowry was not a named account holder of any of the Fine Gael accounts into which these monies were paid. On the basis that your clients can confirm this, our clients believe that the donation does not fall within the Terms of Reference of the Moriarty Tribunal of Inquiry."

Now, the file note of the 6th March refers to a meeting in Mount Street with you, and it says, "I attended a meeting in Mount Street with Jim Miley to consider in further detail this matter of much confidentiality.

At a Trustees meeting the previous evening the Trustees had requested of Jim that he require me to indicate

whether or not the matter as disclosed should be referred to the Moriarty Tribunal. We talked the matter through and it is a very difficult question to answer. Jim felt that reference of that matter to Moriarty would have disastrous political consequences and it will ultimately be a matter on which he will have to talk to the Party leader. We talked further on the matter on this morning, 6th March, and he shall talk with John Bruton further.

In addition, we spoke last night about the Telenor situation and the fact that their solicitor, Kevin O'Brien, had requested of me further assurances that the monies came directly from the David Austin account to Fine Gael and not through any intermediate account in which Mr. Lowry could have had an involvement.

From discussions with Jim last night, the line we are to take is that we should not be messenger boys for Telenor in this matter and that they should make direct contact with David Austin and seek any such assurances such as they wish. Jim feels that there may be an element of Telenor trying to set us up in the knowledge of certain other information, and we don't want to be made hostages to fortune. I just pointed out that although it is clearly in their interest that they don't have to refer the matter to Moriarty, similarly we want to give them little opportunity of feeling that

they have to do so.

I spoke with Kevin O'Brien solicitor this morning and advised them of the situation. I understand that the Chief Executive of Telenor had been dealing directly with David Austin on this matter, so that it wouldn't have been the first time that they would have had such contact."

Now, at this point there was still there were three matters, as far as I can see, under discussion.

Firstly, there was the question posed by Telenor, the answer to which would determine whether they would feel obliged to refer certain matters to this Tribunal.

Secondly, there was the political dimension mentioned by you that referring the matter to the Tribunal would have disastrous political consequences.

And thirdly, there was the question of whether, in fact, between the money leaving Telenor and ending up in Fine Gael, it had gone into an account with which Mr. Lowry could have had an involvement, isn't that right?

A. (Nods head.)

Q. You were concerned with what you described as the disastrous political consequences. I take it the notion that Fine Gael would have been involved in some matter concerning fundraising that might or could

possibly be construed as being improper, would that be right?

A. Well, obviously this is the Party solicitor's words, not mine, but I am presuming he captured the tone of what I was saying. I suppose what it would reflect is the general view that, amongst anyone, political party, politician, or indeed any individual, that an appearance at a Tribunal is not probably on the top of one's wish list. So it was probably in that context it was raised. There was I mean, this issue was dealt with fully. I subsequently discussed it with the Party Leader. It was raised at a meeting of the Party Trustees, and it was decided very clearly that we would seek senior counsel advice on this, which we received and which advised in a particular way that it wasn't relevant to the Tribunal.

Q. I am just noting the rest of the discussion in which it seems the Party was not enthusiastic to probe more deeply into this matter in case it seemed or in case it transpired that there was a closer Michael Lowry connection or involvement with any intermediate accounts.

A. I think the difficulty here on that front was that Telenor, in that discussion with our solicitor, they seemed to be asking us to confirm that this money had not been in any account relating to Michael Lowry or anyone like that from the time it left them until it

arrived with us. Now, given the circumstances that were presented to us, i.e. this money had been given to David Austin in late '95 or early '96, he presented it to us as a personal contribution in April of '97, or whenever it was. We had no knowledge where this money was in the preceding fourteen months. So they were asking us a question which was impossible for us to answer. All we could tell them was where the money was from the time it was received by Fine Gael purportedly as a personal contribution from David Austin, and very clearly, we were able to tell them that Michael Lowry at that point was no longer a member or a trustee of the Fine Gael Party, and therefore had no access or control of that money. But the sense we got of it was they were asking us to, if you like, exonerate the money trail in a time over which we had no control over and over which we were unaware of it.

Q. So, in other words, you were loathe to become involved in providing Telenor with confirmation or a response in respect of a period over which, or in respect of a period during which you knew nothing about this money?

A. Well, it wasn't so much that we were loathe or that we were willing to do that. It simply would have been impossible for us to do that. We could not confirm anything to Telenor about where this money was at a time when we didn't have it.

Q. Well, wasn't that a matter of concern to you as a

responsible political party, that here was a contribution to your political party which appeared to have gone into limbo, as far as you were concerned, for a period of a year and a half? Is that not a matter of serious concern to you? Leave aside Telenor's problems.

A. It absolutely was, as indeed the whole situation presented to us was of grave concern, which is why we referred the matter to an eminent senior counsel to get his advice. And you are aware of the advice he gave us.

Q. I am aware of that. But at that point, do I understand that you weren't enthusiastic and the Party wasn't enthusiastic to refer the matter to the Tribunal, even though there was a time gap or a hiatus during which you didn't know where the money was?

A. It wasn't a matter of enthusiasm or lack of enthusiasm. It was a matter of whether it was relevant to the Terms of Reference of the Tribunal, and that was the key issue. It was the key issue it was the basis on which Telenor had approached us and it was the basis on which we ultimately sought a legal opinion which advised us in a particular manner.

Q. Now, you may be aware that during the course of the examination of witnesses from Telenor, or one witness from Telenor at this Tribunal, one of the matters that was pursued was why Telenor had not asked Fine Gael or

anyone else had not asked Fine Gael in 1997, sorry, I beg your pardon, in November of 1997, for a receipt or a duplicate receipt or some other evidence that they had received this money. By the time the issue came to you, it would appear that you were able to establish that the money had reached Fine Gael, but there were outstanding queries concerning where the money was from the time it was intended to but didn't reach Fine Gael and the time when it actually reached Fine Gael and Mr. David Austin had been asked about it. The problem was the potential involvement of Mr. Michael Lowry, isn't that right?

A. That's right.

Q. But did anyone ask Michael Lowry about it?

A. No. I certainly didn't ask him. I don't think anyone on behalf of the Party would have. Mr. Lowry was the subject of investigation under this Tribunal which was sitting at the time, and it would have been

Q. This Tribunal knew nothing about this payment?

A. Absolutely. But

Q. Wouldn't it have been the obvious place to send information about it? But why didn't you get on to Mr. Lowry and say, "Look, there is a discussion you may have had some involvement in this money from the time it left Telenor when you were a member of the Party, a Minister in the Government, the Chairman of the

Trustees, and the time and a signatory to the bank accounts, and the time when it actually arrived in the Party." Wasn't he a person that, if you were going to try to arm yourself with all the relevant information, you should have made contact with?

A. Well, I don't know if you are suggesting, Mr. Healy, that I was to undertake the work of the Tribunal as an individual. I think I think we need to be very clear about this. I think the memos of our Party solicitor will show I mean, the Party solicitor in one of the first memos you read there quoted the Terms of Reference of the Tribunal. He, as our adviser, was very conscious of the Terms of Reference of the Tribunal and was, at all times, advising that, you know, we need to proceed, mindful of the Terms of Reference of the Tribunal, and if there were issues that were brought to our attention which were deemed to be relevant to the Terms of the Reference of the Tribunal, that we would do so. We carried on that course of action and ultimately took it to the next stage of legal opinion, which was that of senior counsel, and the senior counsel advised that it was not relevant to the Terms of Reference of the Tribunal.

Now, in that situation, I mean, I had dealt, regrettably, given the plethora of tribunals in recent years, I had experience of dealing with at least two

other tribunals, and I think around that time had sworn an affidavit in relation to information for another Tribunal, just supplying documentation and so on as requested by them. So I was very mindful of the need to be rigorous in terms of how this was approached. And I believe it was approached rigorously.

Q. Now, you say that you didn't know whether I was suggesting that you were to undertake the work of the Tribunal as an individual, and I am not suggesting that, and I am impressed that you went to the trouble of trying to have the Party's legal advisers consider the matter and that you got the opinion of senior counsel. But the opinion of a lawyer in a situation like this is not worth very much unless it's based on all of the available information. And what I am suggesting is that there was one person here, the person whose name was up in lights in all your discussions, who doesn't seem to have been contacted at all, and I am suggesting to you that you should have contacted him, if you were going to be sure that any legal opinion you got was based on the available information.

A. Well, if that's your advice, I suppose I wish I had that advice at the time. But you know, it wasn't something that I was advised on at the time, and we felt that we were approaching this in a rigorous fashion.

Q. But you felt you were approaching it rigorously?

A. I did. I felt that there was an issue of I mean, I don't know what the rulings are in relation to, but my gut instinct in relation to matters before a Tribunal, I wasn't sure how proper it would be for me to approach somebody who was the prime witness or prime focus or one of the prime focuses of a particular Tribunal.

Q. But weren't you approaching Mr. Austin? Weren't you yourself being approached by Telenor? Weren't you in fact conducting your own investigation up to a certain point?

A. We were dealing with an issue which was brought to our attention.

Q. Was it appropriate to contact Mr. Bruton? Was it appropriate to contact Mr. Austin?

A. I don't think the Terms of Reference of this Tribunal were relevant to Mr. Bruton or Mr. Austin, were they?

Q. Why do their names have to be mentioned in the Terms of Reference for you to decide whether you could or could not contact somebody? Wasn't this an issue wasn't the issue whether Mr. Lowry was involved with the money? Wasn't that the issue, and you were conducting an investigation or an inquiry into it?

A. All I can say, Mr. Healy, is you can, you know, you can cast doubt and you can differ with the judgement that was exercised. All I can tell you is that a judgement was exercised and legal opinion was sought and received

and was acted upon accordingly, and I can't say any more than that. Now, if you question my judgement, that's a matter for you.

Q. I am not questioning your judgement, Mr. Miley. What I am concerned about is that your investigation seems to have gone so far, but not very much further, and it's the tone of this memorandum which suggests that you were not enthusiastic to promote the notion of referring this matter to the Tribunal. And let me read out the portion of the note again that I think is relevant, "I just pointed out that although it is clearly in their interest, i.e. Telenor's interest, that they don't have to refer the matter to Moriarty. Similarly, we would want to give them little opportunity of feeling that they have to do so."

Now, is that an accurate account of what transpired at the meeting or not, do you think?

A. Well, those are the words of the Party solicitor, which I read for the first time in recent weeks, when this documentation was made available to me. And I would say it's on the stronger end of the meaning of the conversation.

Q. We'll pass on from it to the point where I think before I go on to the next memorandum, Mr. Miley, I think I should refer to the further letter from Mr. O' Higgins to Telenor. I am not sure it's with your bundle of documentation. I think it is, in

fact. If you go on about four more pages.

A. Is there a date reference?

Q. There is a letter of the 25th March of 1998.

A. Yeah.

Q. And there may have been intermediate correspondence, but I think this is the culmination of it.

Mr. O'Higgins says, "Dear Sirs" writing to Messrs.

Kilroy's "Our letter of the 20th inst. Refers and our subsequent discussion thereon. We understand that clarification was sought in respect of the time when the contributions were received, and we write further by way of clarification.

As to the matters raised by you and relating to

Mr. Michael Lowry our clients confirm that as at the time when your client's contribution was paid over to the Party in May of 1997, Mr. Lowry was not a named account holder and at that time had neither authority nor signing capacity in relation to the same."

And that seemed to satisfy Telenor, isn't that right?

A. Yes, I think so. Yeah.

Q. Now, just to clarify the position about signing authority.

At the time that this contribution was received in Fine Gael, Mr. Lowry was not a member of the Party, was not a TD, was not a member of government? He was a TD, I

beg your pardon, and he was not a trustee, obviously,
of the Party funds?

A. Correct.

Q. And he had no, obviously no signing authority or other
authority in relation to its accounts?

A. Absolutely.

Q. However, at the time that this contribution was
solicited, and at the time of the arrangements that
were being made all during the second half of 1995 for
this New York event, and during, obviously during the
whole of 1996, Mr. Lowry was both a trustee, Chairman
of the Trustees, and a signatory on the Fine Gael
accounts, isn't that right?

A. That's right, up to his exit from the Party.

Q. And the documentation that has been provided by the
Tribunal provided to the Tribunal by Fine Gael
includes correspondence between Fine Gael and its
bankers from which it is clear that there was a formal
arrangement with the bank that Mr. Lowry could sign
cheques on the Party's account?

A. Yes.

Q. And there were specimen signatures provided to the bank
along with specimen signatures of all of the other
authorised signatories?

A. That's right.

Q. All of whom were in fact Trustees of the Party?

A. That's right.

Q. And the account of the Party was in fact the property of the Trustees, subject of course to the trusts under which they held it?

A. That's right.

Q. So that while what is stated in that letter is correct, as of May of 1997, there is no doubt that at the time when the money was solicited, Mr. Lowry was a person who had authority and signing capacity in relation to the Fine Gael account, isn't that right?

A. That's right. He had full signing authority up to the time that he was removed from government as a TD of the Party.

Q. Well, if we could just pass from that for the moment and go on to the next memorandum of the 9th March of 1998. This is a memorandum to you, "re the Moriarty Tribunal," from Mr. O' Higgins, and it states, "I refer to the matters raised by the Trustees as to whether or not the circumstances pertaining to a certain contribution made to the Party in May of 1997 and recently returned to the donor raises issues which ought to be notified by the Party to the Moriarty Tribunal.

You will be familiar with the Moriarty Terms of Reference, and paragraph (e) to (g) relate to Mr. Lowry. Essentially what the Tribunal is ascertaining is whether Mr. Lowry or the Party received monies from any donor whose motivation could reasonably

be construed to have been to influence him in the making of a decision perceived to be preferential to the donor.

Section 2(2)(ii) of the Ethics in Public Office Act of 1995 inter alia defines a connected person as including as follows:

'A person in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust.'

The payment in this instance was made ultimately to the Party and we have no knowledge or information that Michael Lowry was even aware of such a payment.

Neither have we any information nor is there is any evidence of the payment having been returned for favours granted by Mr. Lowry in the discharge of his public duties. It is arguable that Fine Gael was a 'connected person' to Michael Lowry in his then capacity as Chairman of the Trustees. However, if you look at the definition of a 'connected person,' it prescribes that the Trustees 'controls' the trust.

This would appear to be referring to the beneficiary of the trust rather than the body of Trustees themselves.

If this is correct, then the beneficiary of the trust in our instance would be the Party and clearly

Mr. Lowry did not control the Party. If this subsection, when referring to 'control' is talking about the Trustees themselves, then it is a matter of conjecture as to whether or not Mr. Lowry in his capacity as Chairman had control over the Trustees and this was probably never the case.

On balance, I feel that based upon the evidence which we have available to us at this stage, that the circumstances do not prevail which would obligate us to make a disclosure to Moriarty."

Now, at that point, do you know whether Mr. O' Higgins had been provided with the file relating to the US event which showed that the event was, as far as I can judge, effectively sponsored in a ministerial or government or party sense by Mr. Lowry?

A. I don't know that, no. I am not sure. He may have been, but I am not sure.

Q. And to judge from your evidence, we know that he would not have had the letter, the handwritten note from Mr. Austin that had been mentioned earlier?

A. He certainly wouldn't have.

Q. And we also know that he would not have had the Post-it that I have mentioned which recorded the conversation between Mr. Johansen and Mr. Austin referring to Mr. Lowry?

A. No.

CHAIRMAN: Mr. Healy, Fine Gael have certainly made a very full disclosure to us. I am hoping it won't be necessary

MR. HEALY: I am trying to avoid it. In fairness, we have every single document, much of which simply refers to back and forward dealings between the solicitor and the Party, which are not of huge significance.

I think I should refer to your own file note of your conversation with Mr. Denis O'Brien. We are now moving into 1998. Do you have a copy of that?

A. I do indeed, yeah.

Q. It says: "File note.

Notes from phone conversation with Denis O'Brien, Chairman of ESAT on the 2nd June, 1998.

Phone call arose from return of Telenor cheque to FG following earlier exchange of correspondence and contact via legal representatives.

Denis O'Brien said he felt they had to send back the cheque." Then in quotation marks you have written, or you have typed, "Given that we were asked for money in the first place, we don't feel we should take it back.

We think if we took it back we would look guilty. We have nothing to be guilty about.'

Said he spoke to a small group on his board and that they were a bit upset at having the cheque offered

back. 'It's not on at this point to take it back, he said.' Jim Miley sought absolute clarity on Denis O'Brien's position and established that he was resolute in his position. Told Denis O'Brien that he would need to inform the Chairman of the Board of Trustees and would revert if there was to be any further action on the matter by FG. Conversation ended with some discussion on matters of general interest.

Subsequently spoke to Buddy Kiernan, who agreed with Jim Miley that there was nothing further Fine Gael could do if ESAT/Telenor refused point blankly the return of the cheque."

Could you just confirm for me again that you typed that document yourself?

A. Yes, I did.

Q. You note that the document is signed by you on the 5th June of 1998?

A. Yes.

Q. And it refers to a phone conversation of the 2nd June of 1998?

A. Yes. I may well have typed it on the 2nd and then just scrawled a signature on it on the 5th. I am not sure. I don't have a handwritten note of that or a record of a handwritten note of that conversation. I may have got that phone call on my mobile phone. I could have been in my car or out of the office, and, you know, I may have taken some rough notes on a laptop

or something like that and then done up the note afterwards. But I don't have any handwritten note, as you see.

Q. You say, "Notes from a phone conversation with Denis O'Brien, Chairman of ESAT."

A. Yeah.

Q. Would you have described Mr. O'Brien as Chairman of ESAT, or how do you think you came to describe him in that way?

A. I presume that's what I understood he was.

Q. Well, is it based on anything he said to you or is it your own impression, do you think?

A. No. He was someone whose name was in the paper every other day, so it was on that basis I would have put it in there.

Q. Right. There has been some discussion as to whether, in the course of evidence given by Mr. O'Brien, as to whether the portions of this letter that are, or this note that are in quotation marks, an accurate account of what was stated to you in the course of the phone call. Have you any comment to make on that?

A. Well, again, as I said earlier, if I were trying to recollect a phone conversation now without the benefit of a memo or a note of the time, I would find it improbable, obviously, to give you the write quotes.

I would be unlikely to have committed quotes to paper in inverted commas unless I was confident at the time

that they were direct quotes or as close as possible

thereto.

Q. Eventually in 1998 Mr. O'Brien in his evidence, I think, referred to a meeting he may have had with you prior to this telephone conversation.

A. Yeah, I met him earlier, and I think you have a copy of that through our solicitor. I have a note I did on that. It was back in March, I presume, late February or March, after we had had the contact from the Telenor people and when we had decided to return the cheque. As a matter of courtesy, I rang Denis O'Brien, assuming that he would have been aware of this at any rate. I rang him to say that we had taken the decision to send back the cheque; that, you know, there was no offence meant, but that we were we had taken a firm decision on that. When I phoned him, he urged me to go to meet him, which I did in his office on whatever date I have referred you to. I did have an entry in my pocket diary which I was able to confirm that date, was it the 4th March or something? At any rate, whatever date the meeting was.

Now, at that meeting, the only issue that I was dealing with was simply to say to him, "We are returning this cheque. We are returning it to Telenor because that seems to be where it originally came to David Austin and then ultimately to Fine Gael." And he would have

urged me to the contrary and said, "Look, you know, why send the cheque back," and all that sort of thing. I wasn't there to negotiate or listen to his views. I simply went there as a matter of courtesy, to inform him of the course of action we were taking.

Q. You are quite right. You provided the Tribunal with your diary, and it does show a meeting with Mr. O'Brien on the 4th March. You have also provided the Tribunal with a letter you wrote to the Party solicitors on the 21st March, 2001, in which you again refer to the meeting. And I think, in fairness to you, I should read your letter which may remind you of what you felt about the meeting in May of this year.

You say, "Dear Kevin, I refer to our phone conversation this morning in relation to the query you received from the Moriarty Tribunal regarding the Telenor/ESAT issue and in particular a meeting between myself and Denis O'Brien.

I have reviewed my pocket appointments diary and I can confirm that the meeting referred to did take place on the Wednesday, 4th March, 1998, at or around 9:00 a.m. I attach a copy of the page from my diary of the 4th of March. I recall that the meeting took place in Mr. O'Brien's office in the Malt House. My recollection is that the meeting arose following a phone call which I had to meet Mr. O'Brien to inform

him as a matter of courtesy of the fact that Fine Gael was returning a donation of €1,233,000 to Telenor/ESAT having discovered for the first time in the recent days/weeks the true source and timing of that donation and the circumstances in which the donation was passed to Fine Gael. I believe that Mr. O'Brien suggested that it would be more appropriate to meet to discuss the matter rather than discuss it over the phone. I have no minute of my meeting in my notebooks, but I remember it as being cordial and straightforward. My recollection is that I outlined the recent sequence of events following the contact from the Telenor representatives. I informed Mr. O'Brien that the Party Leader had instructed that the donation be returned. Mr. O'Brien strongly argued that it should not be returned as there was nothing improper about the donation in the first place. His views were the same as those noted from our subsequent telephone conversation on the 2nd June which has already been supplied to the Tribunal. I recall emphasising the fact that the decision to return the donation was a final one."

To return to your note of your telephone conversation on the 2nd June. Was that an equally cordial telephone conversation?

A. Yeah, it was. There was no rancour or whatever in it. Mr. O'Brien had a different point of view, and he was

expressing that very strongly to me, but you know, we didn't have a falling out or anything like that. And you know, there was no occasion to. We simply had a position on this and we had taken that decision.

Q. Did Mr. O'Brien say to you at all in the course of that telephone conversation, or any telephone conversation, that this whole contribution and the soliciting of it was a mistake on the part of your party?

A. Well, no, he didn't. But I mean, I don't think, and I am, you know

Q. Did he ever say that the Party should never have sought a donation from him?

A. Well, the Party did not seek this donation. I mean, you know, I think it's important that I would note from media, some media reports today that that construction could be put on it. David Austin, it would seem, sought this contribution. That was not

Q. In fairness to Mr. O'Brien, if I could just stop you there, he was organising a fundraising event with the imprimatur of the Party?

A. I do think, I am not here to speak for the Party, as my capacity as a former representative of the Party, you know, there was no authority to seek that particular donation at that time. So that's an important point, and I just want to mention that in passing. No, but he sorry, your question again?

Q. Could I just say two things before I come back to my

question. Did you ever say to Mr. O'Brien, "The reason we are handing this back to you is that the person who sought it from you had no authority whatsoever to seek it on behalf of the Party"? Did you say that to him, what you just said to me?

A. The circumstances were as outlined in the letter. There was an issue of the inappropriateness in terms of timing that this original donation had been made to David Austin. But secondly, the manner, this circuitous manner where it had been

Q. I am only concerned with what you said, Mr. Miley.

A. I would have said that to him. I would have explained that that was the reason, that those were the reasons that the Party was uncomfortable with this. I remember saying to him, you know, "It pains me to have to give a donation back to anyone at any stage. It's hard enough to raise money, but you know, in this case, the decision is very clear. We are giving it back. And that's the end of the matter."

Q. And when you raised the question of inappropriateness and the fact that the Party was not comfortable with this, did Mr. O'Brien ever say to you, "Well, look, you made the mistake in looking for it first day. You should never have sought this donation from me or from any company with which I was associated."

A. No, I don't remember him putting it I do remember him saying that, you know, we were asked for this

donation in the first place. I mean, he would have put it in that way, but I don't necessarily he'd have put it in the way you have put it. I mean the quotation I have there is probably the best record I have of that.

Q. Did he ever say to you in the course of your discussions, look, in any case, this wasn't an ESAT contribution; it was a Telenor contribution?

A. I don't recall him saying that to me, no.

Q. Well, you know that an issue has arisen in the course of evidence in this Tribunal.

A. Yes, I do.

Q. That it was a Telenor contribution, and he had nothing to do with it other than to pass on a message?

A. Yes.

Q. Did he ever say that to you?

A. I don't recall him ever saying that to me.

Q. Now, one last matter, and it's in relation to the recommendatory portion of the Tribunal's Terms of Reference and I suppose it follows on, to some extent, from some of the things you were saying about Mr. Austin's authority or lack of authority to seek this or to request this donation.

In the Party's letter of rejection, if you like, of this donation, when the full facts were brought to its attention the Party stated that while it would take

contributions from intermediaries, it would only do so where the identity of the true donor was made known to the Party, isn't that right?

A. That's right.

Q. The Party also said that if the donation had been offered directly by Telenor/ESAT, then the Party would have had to decide whether to accept or reject it?

A. Correct.

Q. We know from a statement provided by Mr. John Bruton and from references to that statement and to his views in your evidence, that his view was that it should be rejected from the outset, because of its proximity to the granting of the second GSM licence?

A. Yes.

Q. Isn't that right?

A. Yeah.

Q. So there were two principles operating then from the point of view of the Party. Firstly, there was the fact that it didn't wish to take contributions from unidentified sources.

A. Yes.

Q. Secondly, it didn't think it appropriate to take a contribution from a party or a person to whom a substantial or on whom a substantial benefit had been conferred, in this case the second GSM licence, isn't that right?

A. Mm-hmm.

Q. Now, you may not be aware of all of these matters, but Mr. Austin was given, as far as I can see, a free hand, subject to Mr. Lowry and the other ministers who were involved in targeting the various potential contributors to the New York event, isn't that right?

A. I am not sure what you mean by a free hand.

Q. Well, maybe I am overstating it. He wrote to Mr. Lowry. He sent Mr. Lowry a list of the people he thought should be targeted. He then prepared an analysis of who should target who and he prepared a report based on the result of that, of the various approaches made to various targets, isn't that right?

A. Yes, yes.

Q. And then ultimately he came up with presumably a guest list for the dinner?

A. Yes. But the target list, you know, was approved in advance. I mean, you know, in terms of the mechanism of that fundraising, it was done with, you know, an official of Fine Gael headquarters who was involved in the administration.

Q. I see.

A. And so, you know, it's not as if he was the invitations were issued by the Party with letters of invitations on behalf of the Party. So he wasn't, you know, given a thousand sheets of notepaper and given off to do that. That was not the case. So it was a restricted free hand, might be a more appropriate

description.

Q. Would you consider it appropriate for somebody in Mr. Austin's position to be seeking contributions in the latter half of 1995 from individuals who may have been associated with entities involved in bidding for the second GSM licence at that time, or around that time?

A. No. I think there would have been an issue there, yeah.

Q. Well, I don't want to go into the details of this with you, but you certainly would have regarded it as something that would have warranted further consideration?

A. Certainly. I mean, I think one probably can't adopt a black and white attitude to this, but certainly if there was doubt about an individual target for a donation or an individual donation, that's a matter that should have been clarified with the Party itself. That, you know, a person such as David Austin would not have been empowered to make that decision.

Q. Now, again it's not necessarily a matter for you, but the Party has provided the Tribunal with all of the information concerning the US event. And when the Tribunal ultimately comes to examine more deeply, or more closely the circumstances of the GSM competition, it will become clear that a number of people involved in that event were, and I hasten to add, completely

openly involved in that event were nevertheless involved in the second GSM licence competition. Now I am sure that comes as a surprise to you but in terms of the recommendations that the Sole Member has to make concerning party fundraising, do you think that party fundraisers should be subject to more control especially where you have the facilities of a minister and his, the knowledge he would have concerning government activities, that there should be more control of party fundraisers to ensure that these approaches are not made at a time when they might be misconstrued?

A. Absolutely. I mean, I don't think that anyone in the party would have differed with that.

Q. Well, I presume you'd be disappointed to learn that there were people involved in that dinner who may have been that persons whose at least names appear on these lists who may have been involved in the second GSM licence.

A. Successful or unsuccessful?

Q. Well, in Mr. O'Brien's case, successful, and in the case of the others, unsuccessful?

A. Mr. O'Brien wasn't on the list, nor Telenor, nor ESAT.

Q. Unsuccessful.

A. So unsuccessful, I see.

Q. But the dinner, you'll recall, was being organised from July of 1995.

A. Yes.

Q. Up until November, which is roughly the same time period during which the competition was being conducted?

A. Yes.

Q. Lastly, as you so correctly point out yourself, the one person's name who does not appear on this list but whom a contribution was solicited in connection with this event, we are told, was Mr. O'Brien, ESAT or Telenor.

A. Yes.

Q. Thanks very much for your assistance, Mr. Miley.

CHAIRMAN: We will seek to conclude your evidence, Mr. Miley. Mr. Fitzsimons?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Miley, I think you mentioned the Electoral Act in the course of your evidence and could I suggest to you that as a result of it and other changes in that area that have come about in the past few years, that the culture in relation to political fundraising in this country has undergone a sea change?

A. Yes, that indeed, and proceedings such as these, I think, have drawn light to the need for more careful procedures.

Q. Indeed. Would you agree that this fact should not detract from our perception of the previous regime, if I can describe it as such, when there was a much looser

approach to political fundraising?

A. Well, I think previous approach, and I can only speak from personal experience, there may have been a time when the system was looser in terms of the statutory rules that applied to it. But I'd like to think in my case and in the time I was involved with Fine Gael, that the procedures were nonetheless tight in relation to ethical standards, which is the ultimate benchmark for anyone involved in dealings of that nature.

Q. Well, essentially the point I wish to make is that under the new legislative regime, all political contributions are not now legal. Whereas before, any person, any business, any corporation could make a political contribution to a political party at any time.

A. Provided the Party was willing to accept it and the donor was willing to give it and that there was a transparency in the dealing, you are absolutely right.

Q. Now the use of the word 'inappropriate' that Mr. O'Brien has used on a number of occasions and has been used in other contexts, the question of inappropriateness during that regime - and of course the Tribunal is requesting, if you like, the regime of a few years ago, not the present situation - the question of the appropriateness or inappropriateness was really a question for the political parties, not so much the donors; would that be a fair way to put it?

A. Well, certainly political parties had a have a particular onus in terms of ethical standards, but I would have thought that the laws of ethics applied to all individuals as well.

Q. There was nothing wrong at any time in an individual offering a political contribution to a political party.

But a political party would have had to take a view on that contribution?

A. There is nothing wrong with the donation provided it's not being made for improper reasons.

Q. Of course, absolutely. We are proceeding on that basis.

A. Yeah.

Q. But even with a donation made for proper reasons, a political party might have to take a view on whether it was appropriate or not appropriate to accept that donation?

A. Absolutely. There may be, you know, perceptions of impropriety which would need to be taken into account.

Q. Political parties would have a duty, would always have had a duty to give example to the people?

A. Yes.

Q. To the populous at large in terms of conduct, or should be giving an example.

A. Yes.

Q. And also they would, could I suggest to you that in terms of appropriateness or inappropriateness, they

would be thinking of their own interests, because if they were to accept a contribution at the wrong time or in the wrong circumstances, that they could be damaged politically by having accepted a particular donation, if it became public?

A. Yes of course.

Q. Now, donors, on the other hand, did not face either of those risks or did not have to take account of either of those considerations?

A. Well, that's a matter for donors and individuals to make their own decisions about to whom and to what they are accountable. I mean, everyone is accountable to the laws of the land.

Q. Of course. Absolutely

A. And even in the absence of specific statutory rules on donations in advance of the Electoral Act, you know, other laws of the land applied to all circumstances, including the giving and taking of donations. But notwithstanding that, yes, I take the point you are making.

Q. Just in relation to Mr. O'Brien, I think he had given contributions to Fine Gael before the before he received the licence in October of 1998?

A. Yes, he had. And since, as we know from public records.

Q. I think he was quite a substantial contributor, would it be fair to say? For example, hadn't he given a

substantial contribution at the time of the West

Wicklow by-election in April of 1995?

A. Yes, he had, which was again noted in the newspapers.

Q. And that wasn't an appropriate contribution, was it, from his point of view?

A. I wasn't employed by Fine Gael in April of 1995, so I am not going to make judgments on the appropriateness or otherwise of it.

Q. There was no reason why he should not have given a contribution to the Fine Gael Party. It's his democratic right, isn't that right?

A. It was his democratic right to offer it and it was Fine Gael's democratic right to accept or reject it.

Q. I think he was subsequently criticised in respect of that donation, isn't that right, in the media?

A. There was some media comment on that.

Q. Moving on: Mr. Austin, I think, was a fundraiser for Fine Gael for many years, isn't that right?

A. Yes. I mean, I am not sure how far back it stretched but he was, certainly in my time, he was in probably '95/'96, and his ill health precluded him from involvement thereafter.

Q. Can you say, from your experience, do all of the political parties, at least a number of them, have various people who act as fundraisers in your experience?

A. There would be various committees, yeah, that's

generally the way the fundraising was run. People who would help out.

Q. Now, I want to touch upon the subject of "pick me up payments", Mr. Miley. I think I read in the paper recently where you had been involved in eliminating that practice from your Party, but could I suggest to you that the practice of "pick me up payments" is a practice which political parties in this country slid into over the years. That practice being a practice whereby a political contribution was made and an invoice, and a receipt was returned for services or something of that kind; an unfortunate practice which has now ended?

A. Yes, it operated in a number of parties in previous years.

Q. And I think this is an Irish phenomenon, according again to the newspapers. Can you comment on that?

A. Well, I am sure if you search diligently, you'd find the practice in other countries, in South America, perhaps.

Q. Perhaps. Now we know that in this instance, that when Telenor was proceeding to, in this case, Mr. O'Brien's suggestion to make a contribution, or make the contribution to Mr. Austin, that Telenor had to have a piece of paper and informed Mr. Austin of that, and that Mr. Austin suggested that it was no problem and he would give an invoice with consultancy fees on it.

Now, if Mr. Austin had been involved as a fundraiser for Fine Gael for a number of years, he would have been very familiar with the practice of "pick me up payments", wouldn't he?

A. I don't know if he was. In the report in the investigation we carried out, Mr. Fitzsimons, I think there were two or three instances of "pick me up payments" that Fine Gael uncovered. I think there may have been one in 1994, perhaps one in the early nineties and one in the late eighties. I am not sure, but I would guess that Mr. Austin had no involvement in any of those, so I don't know what you mean by your question.

Q. I am not looking for details of Fine Gael's of what happened within Fine Gael on that front. But what I am suggesting is that Mr. Austin, as an experienced party fundraiser, would have been perfectly familiar with the practice of political parties in Ireland of giving invoices of this type, as a matter of course, thinking it was perfectly normal?

A. I don't know that. I don't know that.

Q. It's a question of Mr. Austin, he being an experienced party fundraiser?

A. I don't know that. I think it is important to clarify for the Tribunal. Mr. Austin, while he was actively engaged around that time in fundraising, you know, the

word 'experienced party fundraiser' could indicate that his involvement stretched back over 20 years. I don't think it did. I think his involvement was more recent than that. You know, he was not one of the, I suppose to coin a phrase, fundraising committee stalwarts that was there, you know, for ten or twenty years. So that's my impression of someone who came in in 1995.

Q. I am not suggesting that Mr. Austin thought he was doing anything wrong by doing this. He possibly thought it was perfectly normal. Maybe he was naive in that regard?

A. Well, I think if I may say so, Mr. Fitzsimons, you are equating "pick-me-ups" with the issuance of an invoice for consultancy fees by someone who was acting on behalf of the Party. You may say that they are in the same general league, but, you know, they are two separate types of activity and certainly the issuance of an invoice for a specific donation such as this, this is the only time I am aware of that in Fine Gael. And it's not something that would have been authorised at any time, to my knowledge, by the Party.

Q. But there is no doubt that Mr. Austin was acting on behalf of the Party and raising funds in connection with the Fine Gael Party dinner, isn't that so?

A. Mr. Austin certainly was with agreed invitation lists and actions arising therefrom.

Q. You see, one of the curious features about the cheque

is the fact that, maybe it's not curious, but one of the features about what has happened in this matter is that Fine Gael have resolutely refused to keep the monies, but could I suggest to you that one of the reasons may be that it was obtained on a basis of a pick-me-up, on the basis that it was a pick-me-up payment, isn't that so? Fine Gael had cleaned up its act in this regard. Suddenly they find themselves in the presence of a new pick-me-up payment, and just had to give it back, isn't that so?

A. I mean, you are using the word Fine Gael as if it was authorised.

Q. Well, it was done. And it was done in the name of Fine Gael, on behalf of Fine Gael, rightly or wrongly, this was what was done.

MR. MEENAN: Mr. Chairman, I really don't know where this is all going. We have had considerable evidence concerning the background of this payment: a payment from Telenor to Mr. Austin; the conversation between Mr. Bruton and Mr. Austin that the money was not to be received; a personal contribution by Mr. Austin which turned out to have been the original Telenor money and the money going back. I cannot, for the life of me, see where pick-me-up comes into any of those facts.

CHAIRMAN: I think, Mr. Meenan, I'll give Mr. Fitzsimons a little more opportunity. If it

becomes particularly extended, I may intervene, but I'll allow matters to proceed for the moment.

MR. FITZSIMONS: I have made the point and it's for the Tribunal to draw an inferences from it.

Anyhow, you don't accept that this was a reason for Fine Gael not wishing to have anything to do with this money, once it was discovered, the background to it was discovered.

A. No, I have outlined clearly the basis on which Fine Gael rejected, or wanted to return the donation, given the overall circumstances.

Q. Now, you did tell us earlier about the US rules in relation to party political fundraising in the US.

A. Yes.

Q. And the fact that you had a US lawyer advising you in that connection.

A. Yes.

Q. Can we take it that false declarations, or sorry, I shouldn't use that word, incorrect declarations made in respect of such fundraising are probably subject to criminal penalty in the US?

A. Yes. I would assume so, yes.

Q. This contribution, which was raised in connection with the Fine Gael Party function, in all the evidence, was not declared and this, I suggest, gives rise to another legal difficulty which may or may not have been taken

into account as a factor in deciding not to hold onto the money. Can you assist us on that?

A. Absolutely I think you are the basis on which Fine Gael wanted to return this donation is outlined very clearly in the documentation which has been brought before the Tribunal and the evidence I have given to support that and you have, I believe, copies of that documentation available to you. These other issues that you are raising were not factors that were considered.

Q. Very well. That's something that the Tribunal can look into.

MR. MEENAN: Again, Mr. Chairman, I have to this is in the context of a situation where Fine Gael has waived its legal privilege in connection with all solicitors' attendances and all advices received by counsel and all this documentation has been furnished to Mr. Fitzsimons. And it is entirely clear that in the course of that documentation, at absolutely no point is there any suggestion that what duties Fine Gael would have had to the Federal authorities in the United States ever came into this matter at all. And so My Friend is simply not entitled to speculate in a situation where all documentation, including privileged documentation, has been furnished to them.

CHAIRMAN: There is nothing inordinately new,

Mr. Meenan, in my view. Mr. Miley, in one of his own very thorough memoranda, has already alluded to the particular points of potential infirmity that concerned him when he was first alerted to the substance of the true facts. Proceed, Mr. Fitzsimons.

MR. FITZSIMONS: Just My Friend reminded me of one point. I am afraid we haven't yet received a copy of Mr. Miley's memo of his meeting with Mr. O'Brien. And if we could have copies, and the letter of the 15th May 2001.

Now, going on to another matter.

Q. Mr. Austin made the payment to Mr. Conroy when he was returning the money. Now, Mr. Conroy was a Party fundraiser, isn't that right?

A. That's right.

Q. Is it reasonable to say that Party fundraisers took pride in raising as much money as they could for a party?

A. Yes.

Q. Naturally enough?

A. I think that's fair to say, like any fundraising committee that any of us have ever been involved in.

Q. There is nothing wrong with this. Was this a feather in Mr. Conroy's cap when he came in with this big sub?

A. Well, I am not sure if you would describe it as such.

It was expected in that Mr. Austin had already

contacted me. They were friends, quite good friends from what I can understand, knew each other very well. So you could describe it as that, but I think you know...

Q. Mr. Austin must have been in a dilemma. He had been told back in February of 1996 to leave the money where it was. Leave it where it was. It happened to be in his bank account. He informed you, according to your memo of the 23rd February, 1998, that it had remained in his bank account for the duration and he then managed to get rid of it back to where it was intended to go by making this donation, via Mr. Conroy, in a manner that made it look like a perfectly normal political donation to a fundraiser, isn't that so?

A. Yeah, well it was given to us and received as a personal donation.

Q. And he got rid of this headache that he presumably had to live with after he raised this, what he presumably thought, wonderful contribution, but then was told to leave it where it was by the Party. Isn't that so?

A. Well, I suppose one could say that. The receipt and ultimate trail of this donation has led to considerably many more headaches

Q. Absolutely, but it's capable of that perfectly innocent

A. I think I have tried to keep my evidence to the facts as I know them and the records that I have. Any

speculative activity, I'll leave to the Tribunal.

Q. Now, you mentioned the you referred to the fund documents sorry, I beg your pardon, the fundraising documents in relation to the Party dinner in the US.

And I think it was just, I think you agreed that the contribution of \$50,000 was very much off kilter in a sense, that the tables were supposed to be \$7,500 each?

A. They weren't tables at all. They were individual places. So it jarred with what the reality was.

Q. It jarred, indeed. But this is really just a small point but just to restore balance to that because no doubt \$25,000 per place does jar, but when one looks at the list, we see two contributors of 20,000; we see five of 10,000; we see one of 2,500. They would have all jarred too, I take it.

A. Well, I think the substance of it, and, you know, I don't I haven't recently seen the invitation letter or whatever, but

Q. The list is now up on the screen.

A. I know the list there, but the invitation letter, as I recall it, would have asked for a minimum contribution of 7,500. Now, to my knowledge, nobody was asked to contribute specific amounts higher than that. If they chose to, then so be it. But certainly the idea of, you know, two tables at 25,000, seemed to bear no reality to the overall approach that was taken to this.

Q. Well, I mean, perhaps, I mean, can one not put it down

to an enthusiasm, the enthusiasm of the fundraiser

perhaps?

A. One could, certainly.

Q. And just as 25,000 from a contributor for a table would

jar, so would the two 20,000 contributions jar with you

if you saw a list or it would appear, wouldn't it?

A. Yes.

Q. Now, just in relation to a lot of emphasis has been

placed by Mr. Healy on Mr. Lowry and because of the

fact simply that Mr. Austin got this great idea to

organise this function and wrote to Mr. Lowry. But,

in fact, we see on the list, the follow-up list, that

there are 86 names were to be followed up; this is the

document that's before the Tribunal, and Mr. Lowry was

only asked to follow-up six of the 86, isn't that so?

A. That seems to be what the list suggests.

Q. That's what the list says, in fact. So it doesn't

indicate any control by Mr. Lowry of the function, does

it?

A. That's a reasonable assumption, I guess.

Q. Now, just coming to Mr. Austin. When you spoke to him

on the 17th February, 1998, and the 23rd February,

1998, was he quite clear? We know he was ill at that

stage.

A. In relation to what?

Q. Well, your two conversations with Mr. Austin

A. Was he lucid, do you mean?

Q. Yes.

A. Very lucid. Yes.

Q. And had you spoken to him on a number of times previously?

A. Not necessarily in connection with this not in the recent past before that, but yes, in previous times, I would certainly have, either face-to-face or on the telephone, yes.

Q. He would have, I take it he would have impressed you as a clear, lucid, intelligent man?

A. Yes.

Q. And he wasn't likely to make silly mistakes or misrepresent facts in any way?

A. I would have thought not.

Q. Just moving onto the bank accounts, the banking documentation that you have furnished with your statement, which includes letters from the bank speaks of Fine Gael bank accounts and there are, of course, the signatories, the signatories which always seem to include the Trustees, isn't that right?

A. Correct.

Q. But there are no the bank accounts are not bank accounts in the names of the Trustees?

A. I am sorry, can you repeat that?

Q. They are not in the names of Trustees, the bank accounts?

A. Oh no, they are in the name of Fine Gael.

Q. Fine Gael, exactly. So both at the time the \$50,000 contribution was paid, was requested, was paid and was ultimately received by Fine Gael, the bank accounts that existed into which it was to be paid were in the name of Fine Gael and never in the name of Mr. Lowry?

A. Oh no. Mr. Lowry was, like other Trustees, an authorised signatory to the accounts.

Q. Nor more than that?

A. No more than that.

Q. Now, Sir, I just have one more question, but I'd like to see the memo of the meeting with Mr. O'Brien. My Friend

CHAIRMAN: Well, Mr. Meenan, I was, in any event, going to offer you the opportunity, since we don't implement the adversarial rule sequestering clients from their advisers, I am going to offer you the opportunity of deferring what questions you may wish to put until after lunch. Perhaps as we are now a little past one o'clock, I'll defer the conclusion of Mr. Miley's evidence, including Mr. Fitzsimons' last question until he has had an opportunity of seeing the memo. Ten past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

TRIBUNAL RESUMED AS FOLLOWS AT 2:15 PM:

MR. FITZSIMONS: I am virtually finished, thank you,

Sir. Just one discrete point. The legal opinion that Fine Gael obtained from senior counsel, Mr. Miley, at paragraph 2, I just want to read out paragraph 2 of it:

"It was known to the President of Fine Gael and its executive, that this function was being organised by Mr. Austin and they approved of him so doing."

So, it would appear from this, from Fine Gael, that the President of Fine Gael and its Executive approved of Mr. Austin organising the dinner. Do you recall that?

A. Oh, yes. Oh, he was acting obviously with the authority of the Party.

Q. I just wanted to make that point.

Now, the next point, Mr. Denis O'Brien, in his statement to the Tribunal referred to a meeting that he had with you. And at page 7, top of page 7 of his statement he said as follows: "Denis O'Brien as Chairman of ESAT Digifone was approached by Jim Miley, General Secretary, Fine Gael, on the 27th February, 1998, and subsequently met with him. At that meeting, Denis O'Brien was requested to accept back a cheque for $\text{€}233,000$ from Fine Gael. Denis O'Brien refused."

Now, we know it would appear that you make a memoranda of all your meetings. Did you make a memorandum of your meeting with Denis O'Brien?

A. I don't have a memorandum of that particular meeting,

but I do have a memorandum, which you have, of the phone conversation of later, 2nd June, I think it was.

Q. But why did you not make a memorandum of this important meeting?

A. Well, the meeting was simply a matter well, the meeting first of all arose from a telephone call which was simply a matter of courtesy. I was simply informing Mr. O'Brien, as a matter of courtesy, of the decision the Party had taken to send back this donation. No more than that. As I said earlier in evidence, it wasn't a meeting to discuss or negotiate. It was a meeting simply to inform him of that. Now, if you compare that with the telephone call in, later in whatever it was, June, when we had, at that stage, given back the donation, and it had been returned to us by ESAT, having been passed on to them by Telenor, at that stage I was trying to impress upon Mr. O'Brien to take back this donation, because, you know, we were it had been returned to us at that stage. So that was obviously something which I was very conscious of noting.

Now, I don't recall why the previous meeting wasn't noted, but as I say, the import of it, it was very simply as I have outlined.

Q. You could have told him that on the phone?

A. I wanted to tell him on the phone, but it was at his request that we met.

Q. Did you tell the Fine Gael solicitors about this Kevin O'Higgins?

A. I don't know I imagine I would have mentioned it.

I certainly note in one, you know, in Mr. O' Higgins own memoranda, where I had made contact or was to make contact with Denis O'Brien, so certainly

Q. Which memorandum is that?

A. It was we discussed it earlier. I can't remember which one it was. Perhaps I should leave it to somebody else to find, rather than me.

Q. I just don't recall such a reference. It's just that there is no memoranda of Mr. O' Higgins either covering a conversation with you in the course of which you tell him about this important meeting when Mr. O'Brien refused to accept a cheque. I am just wondering why.

A. I am not sure the substance

Q. Maybe I can't put it any further.

A. I am not so sure of the substance you are getting at.

Q. Had you got the cheque with you at the meeting?

A. Not at all. I think we need to recount the facts here, as I have outlined them. The facts were that we had decided to return the cheque at that point. We had decided to return it to Telenor, and that's in fact what happened in the days following that through our solicitor. I was simply informing Mr. O'Brien, as a matter of courtesy, that that's the course of action we were taking. I wasn't asking him personally to take

the cheque back. I was simply informing him.

Q. He says you did, and he refused.

A. Well, he told me that he didn't want the cheque back.

But you know, as I say, I wasn't there to discuss or negotiate with him.

Q. I appreciate that.

A. I was there to inform him as a matter of courtesy.

Q. It's just he says he refused. You tried to get him to take it back, he refused, is that correct?

A. I didn't try to no, I think we need to separate the two things. I did not try to get him to take it back.

I told him the course of action we were taking.

Q. He says, "Denis O'Brien was requested to accept back a cheque for $\text{€}233,000$ from Fine Gael. Denis O'Brien refused." That's what his statement says. Is it wrong?

A. Denis O'Brien can account for his own statement. All I can tell you is what I can tell this Tribunal, is that I was informing him I had hoped to inform him by telephone at his request to meet him that the course of action was that we were sending the cheque back to Telenor, and it was a matter then between Telenor and ESAT what they did it. Now, he would have certainly indicated to me at the meeting that they didn't want it back, but, you know, that was somewhat incidental at that stage, because the cheque hadn't actually been formally returned.

Q. Now, he says he was approached by you on the 27th February, 1998.

A. Yes, I think.

Q. The cheque that was ultimately circulated is dated the 26th February, 1998, so it's a cheque that's dated the day before the day upon which you approached Denis O'Brien?

A. Oh, yes. As I outlined to you, we had taken the decision of the course of action we were taking at that stage. Now, I think it may have been I don't know precisely when the cheque was actually sent by our solicitor to Kilroy's.

Q. It is dated the 26th February, the day before you approached Mr. O'Brien.

A. Well, the Chairman of the Trustees who was a co-signatory to the cheque was from Cavan, so he may have been in the office the previous day. I got him to sign it. The course of action that we were taking was clearly decided at that stage.

Q. There is no significance in that maybe can we take it you are telling us that that does not support the proposition that you brought the cheque along to the meeting with Mr. O'Brien?

A. I did not bring the cheque with me to the meeting, no, no. No. No.

Q. One final question: According to your statement, the cheque was returned by ESAT on the 29th, 1998.

A. Yes.

Q. Is there a letter from ESAT returning the cheque?

A. No. As I recall it, it came in an envelope, and it may have been an ESAT envelope or it may have had a blank compliment slip with it, I can't recall precisely, or else it may just have arrived as I don't know what the records show on that. I haven't checked them.

Q. What is the record?

A. Well, perhaps we can clarify that. I think it may have arrived in a blank envelope and that would have triggered my phone call, subsequent phone call to Denis O'Brien.

Q. Because when you say in your statement it came from ESAT on the 29th May, so you are satisfied at that time it came from ESAT?

A. I was satisfied it came from ESAT, yes. And that hasn't been challenged, I take it?

Q. Well, Mr. O'Brien says he never sent it back, I think, so

A. Well, somebody did.

Q. Thank you Mr. Miley.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MEENAN:

Q. MR. MEENAN: Mr. Miley, just a number of matters.

Firstly, in your discussions which went on between

Telenor and Fine Gael, this is now in February of 1998,

Telenor had a concern that this particular cheque that this particular cheque may have ended up in an account in which Mr. Lowry may have had a connection. In other words, that on its route to Fine Gael this cheque might have ended up in a Lowry account. I think you are aware that they had a concern in that regard.

A. Yes.

Q. And you were asked by the Tribunal why did you not get in touch with Mr. Lowry? Now, could I just ask you, were these the facts which you had at the time now in February of 1998: Firstly, that prior to the cheque being given to Fine Gael by David Austin, Mr. Austin had rung you to tell you that he was making a contribution?

A. Correct.

Q. That was back in May of 1997?

A. May April/May of 1997, yeah.

Q. And that you had then discussions with Telenor in February of 1998, you were informed by them that Telenor had given the cheque to had given monies to David Austin, is that right?

A. That's right.

Q. Okay. Now, you, at that stage, were obviously now putting together what had happened.

A. Yes.

Q. Now, with the knowledge of those facts, did Mr. Lowry

enter into that transaction at all?

A. Well, not to my knowledge. The information that we knew and that was supplied to us by Telenor was that they had made the payment to David Austin. David Austin held the money for a protracted period of time and passed it on, as we thought, as a personal donation from him. And David Austin obviously confirmed to us that he had held the money in his account to me and as per my memos and notes there for that time.

Q. So in other words, was it the case that the money trail between Telenor and David Austin and Fine Gael had now been established?

A. Yes. Yeah. Circuitous as it was. It had been established, yeah.

Q. Well, circuitous as it was, but the circuitous part of that transaction did not involve Mr. Lowry, is that right?

A. That's right.

Q. And was that your view at the time?

A. That was the view at the time.

Q. Now, I think that, as you are aware, as the Tribunal indeed is aware, Fine Gael has waived its privilege in respect of all attendances with solicitors and opinions of counsel, and Mr. Healy, on behalf of the Tribunal, went through those various attendances in some detail. There was one particular sentence which I think he put some emphasis on, and this is in a memo of the 6th

March of 1998, and it was the last sentence there which reads that, "I just pointed it out, although it is clearly in their interest that they don't have to refer the matter to Moriarty. Similarly, we want to give them little opportunity of feeling that they have to do so." The "them" in that point being Telenor. Now, at the time were you aware that Telenor had their own firm of solicitors involved?

A. Oh, yes. I mean, they approached us through a firm of solicitors, and they had indicated to us that they had taken counsel's advice on this issue, and indeed, from what we could understand, that was the basis on which they approached us in the first place. They I mean, clearly at that only meeting I had with them, they said to us that they their advice their own legal advice was that if we could establish that this money had been received by Fine Gael, that it would not fall within the Terms of Reference of Moriarty.

Q. So their contact with you was for them to obtain the facts so that they could obtain an opinion from their own senior counsel as to the possible involvement of this Tribunal, is that right?

A. That's right.

Q. So was it apparent that at all stages Telenor had their own independent legal advice?

A. That would seem to be the case.

Q. And that they were not relying upon Fine Gael as to

whether or not this matter should be referred to the

Moriarty Tribunal?

A. That's right.

Q. Now, that particular meeting, that meeting which you

had with Telenor, or their advisers in February of

1998, I think that was expressed by both sides to be a

confidential meeting, is that right?

A. Well, it was at their request. They asked for the

meeting to be privileged and they asked us at the

outset of the meeting not to take written notes. And

we I mean, I'd have to say I was probably well,

uncomfortable is the wrong word, but I was certainly

very careful about the proceedings from there on in.

We would have preferred, perhaps, to have an open

meeting. But it was at their request and we

obviously, once we entered into that arrangement with

them, we had to stay by it.

Q. Now, I mean, I take it also at the time that there was

a concern in Fine Gael that this was a matter which

might come within the Terms of Reference of the

Moriarty Tribunal, is that right?

A. There was, yes.

Q. And was it one of the ground rules at that meeting that

if the matter did come within the ground rules or

rather the Terms of Reference of the Moriarty Tribunal,

that the matter would be referred?

A. Yes, that's right. Yeah, absolutely.

Q. And I think you then obtained an opinion of senior counsel, is that right?

A. Yes, we got James Nugent to give his opinion on it, and I suppose I have to say at that stage, I don't know precisely the date of that opinion, but it was a couple of weeks into this thing. There had been a lot of discussion and consideration of it at the time

Q. And based and I think it was senior counsel's opinion that this matter did not come within the Terms of Reference?

A. Yes. And I have to say personally I was probably I was possibly expecting advice to the contrary and prepared to act on that. But we got what seemed to be clear advice that it did not fall within the Terms of Reference.

Q. But I take it it was all done against the background of your knowledge of your duties to inform the Tribunal?

A. Absolutely.

Q. And I take it it was the same as Telenor, they also had their own senior counsel's opinion on it?

A. I would presume so.

Q. Now, I think, as you are aware, it has been Telenor's case that this payment of \$50,000 or $\frac{1}{2}$ 33,000 was money paid by Telenor to Mr. Austin on behalf of ESAT. I think that's the case which they were making, is that right?

A. Yes.

Q. Now, in the course of being cross-examined by counsel on behalf of Telenor, it now appears that they are suggesting that in fact this was either A, a pick-me-up, or B, the cheque was returned because of some possible infringement of Federal laws this is in connection with the United States.

MR. FITZSIMONS: If I gave that impression if I could intervene here. I asked the witness I don't know why it was returned, Chairman, and I put it to the witness that these were possible reasons for the decision to return the cheque. But there is no change in the Telenor case.

MR. MEENAN: You see I mean, that was why I objected to the question

CHAIRMAN: The matters were put, and I have noted as well as some possible matters that occurred to myself about potential differences with the ordinary model of pick-me-ups, and the fact that bar the actual currency which the donation is initially paid, there was no realistic other connection to the New York function. But you are certainly entitled to ask some questions by way of clarification, Mr. Meenan.

Q. MR. MEENAN: Now, firstly, in the course of your discussion with Telenor, was it ever suggested by or on behalf of Telenor's legal representatives that this

payment by Mr. Austin was by way of a pick-me-up or that the cheque was returned because of some possible implications with the Federal authorities of the United States?

A. No, no.

Q. Was the first that you ever heard of this suggestion being made by Telenor, was that here this morning?

A. Yes, it was.

Q. Now, as regards the matter of a pick-me-up, could this have been a pick-me-up by David Austin?

A. No well, a pick-me-up is I am not sure if it's defined in the dictionary, but as it's understood and as I see it defined in the newspapers, is a situation where, for example, a political party had something, say, like a printing bill, and that they get a donor to pay that bill. So it's a donation in kind. So the donor is, so to speak, picking up the bill. So it's a situation where no money changes hands between the donor and the recipient. So in terms of the equivalence with this scenario, it would seem to be quite something different.

Q. Yes, because isn't the whole point of pick-me-up, such, as it were, is that money was not given to the Party but given to the third party who had provided some services to the Party?

A. Correct. And might I say there is another important difference. I suppose one could, regrettably in the

case of all political Parties, the pick-me-up practice is one which requires the consent, if you like, of both the Party and the donor and indeed the supplier, as it's a three-way involvement, and in this case obviously the Party had no knowledge of the donation in the first place and there was no supplier involved. So, you know, it doesn't seem to make sense.

Q. I think Mr. Fitzsimons was correct in his suggestion to you that pick-me-ups were a matter of concern to Fine Gael and also matters which were sorted out, is that right?

A. Absolutely.

Q. Now, then the second proposition which was put on behalf of Telenor was that in some way this cheque would run foul of the requirements to disclose material to the Federal authorities in the United States concerning the dinner in New York. Now, was that ever an issue at all in this matter?

A. Oh, absolutely not, no. I mean, firstly, the returns and the numerous returns that were made by Fine Gael for the various six month periods were done so entirely in accordance with the rules, and as I say, handled by an agent in the United States.

Q. Is that in fact an attorney in Boston?

A. He is an attorney, I don't know if he is still

Q. Just one final matter, that is that evidence has been given as to Mr. Lowry being a signatory of the Fine

Gael account. Could you just possibly tell the Tribunal how many signatures are actually required for monies to be drawn on the account?

A. It requires two signatories. The practice, and I presume it's still the same, is that the General Secretary and the all the Trustees individually are signatories to the accounts, and any two of those signatories are required for a cheque.

Q. I see. Thank you Mr. Miley.

THE WITNESS WAS EXAMINED FURTHER BY MR. HEALY:

MR. HEALY: I think, in fairness to this witness, he wasn't in a position to know, and neither was the Tribunal, that the Tribunal has been informed, and if necessary, a witness can be obtained to confirm that Mr. the late Mr. Austin's involvement in fundraising prior to this event in 1995 was a few golf classics in the early mid-1990s.

Q. I think in fact that accords with the evidence you gave of your recollection, but not your actual direct knowledge, is that correct?

A. Yes, it would fit.

Q. You were also asked, and I thought you gave an answer, but it's different to some extent to the answer you gave me this morning, when you were asked about the extent of Mr. Lowry's involvement in the New York

event. I think it was suggested to you that because Mr. Lowry was recorded in the analysis of the fundraising activity as having approached or having agreed to approach only six of the targets, he couldn't have been significantly in control of the event. Do you recall that evidence?

A. I am not sure what words were used on that, yeah, but I recall this passage, yeah.

Q. Now, of course Mr. Lowry was not himself organising the event?

A. Yes.

Q. But there was no doubt that Fine Gael feels that he was the Minister to whom the proposal was first put, isn't that right?

A. Well, he was Chairman of the Trustees, yes.

Q. And he was involved to the extent that he had some involvement in targeting a certain number of people who it was felt might contribute to the event, isn't that right?

A. Yeah. Obviously, that's something you need to take up with Mr. Lowry, but

Q. I am only going from the records. I am not taking it up with Mr. Lowry.

A. I would say

Q. Can I just clarify one matter arising from your evidence. I think you were asked to confirm, and it is in fact the position from my examination of the

records, that Mr. Lowry did, or is noted as having only agreed to approach ten potential targets. I think the only other Minister who was asked to look at a larger number was asked to approach eight potential targets. So that, even on the basis of that analysis, would suggest, for a busy man as Mr. Lowry must have been at the time, very, very busy, conducting this extremely important competition, quite an involvement, wouldn't that be right?

A. Yeah, it would seem so, yeah. Might I just add, in relation to those that list, I do think one needs to be careful about drawing definitive conclusions from that list, because I often would have seen ministers' names on lists. Indeed, I might have put them on lists myself. So the fact that their names are on a list to do certain things doesn't always mean that they may have done them. So, you know, I think it's an open question as to whether Mr. Lowry or any other one named on that list would have contacted any or all of the names on the list.

Q. I think the list does contain a response to the contacts, I think. If so-and-so is away, If so-and-so's mother has died or whatever?

A. Very conclusive in a lot of cases, yeah.

Q. One other matter which I should have taken up with you when I was asking you what information you had when you were endeavouring to get to the bottom of this issue

that was brought to your attention by Telenor. Now, as I said this morning, you didn't have, either when you were dealing with it or when you were going to counsel about it, you didn't have the letter written by Mr. Austin and which was provided in connection with the IPO in 1997, the handwritten notes written by Mr. Austin?

A. Oh, no.

Q. You didn't have the Post-it which I have described?

A. Obviously not.

Q. And you didn't have the invoices?

A. Oh, absolutely, right.

Q. And am not I right in saying that you did not have the letter which accompanied the invoices which has been referred to in evidence here?

A. Letter from?

Q. I'll just describe it to you. Mr. Austin wrote a letter to Telenor saying, "Sirs, please find enclosed an invoice "

A. Not at all, no.

Q. And you didn't have, am I right in saying, the receipt or the so-called receipt or acknowledgment provided by Mr. Austin, the somewhat curious document of the 19th February of 1996, in which Mr. Austin said, "My sincere thanks for the payment of invoice in relation to consultancy carried out for 1995. Please forgive the total oversight on my part in not acknowledging receipt

of payment and indeed passing on my thanks. This was certainly not something that was taken lightly on my part and not on those from whom have received payment. Please be assured of their appreciation and thanks."

Now, you knew at the time you were talking about Telenor, that you knew from a discussion with Mr. Bruton, and indeed from a discussion with Mr. Austin, that Mr. Bruton had rejected the payment, isn't that right?

A. Mmm.

Q. Had you known at that time that Mr. Austin had not only not acted on that instruction, but had purported to write a somewhat unusual receipt or acknowledgment? I think that's another thing that you'd have put into the melting pot

A. Oh, absolutely, yes.

Q. And you'd have wished to have sight of at the time?

A. Absolutely.

Q. And something you would have brought to the attention of your legal advisers?

A. Absolutely, yes.

Q. And it might have tipped the balance more in the direction that you apprehended might be the outcome of counsel's advice?

A. It may well have done that, yeah. Well, one should never prejudge the opinion of a senior counsel, I suppose, but I am sure that if all the information that

we now have before us had been available, it may well be a different outcome. But we had to deal with what we had.

Q. Thank you very much.

CHAIRMAN: Thanks very much indeed for your assistance Mr. Miley.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Bruton.

JOHN BRUTON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Bruton, I think you provided, for the assistance of the Tribunal, a statement or memorandum of intended evidence, isn't that correct?

A. I did, on a number of points, yes.

Q. And I think you have that before you in the witness-box?

A. I do indeed.

Q. What I intend on doing is to take you through it. I am not going to refer to one aspect of it, and when we come to it, I'll deal with that. I think your memorandum starts by saying that you are a Dail deputy for the constituency of Meath where you represent Fine Gael, is that correct?

A. I do, yes.

Q. During the period covered by the matters discussed in this statement, I think you informed the Tribunal that you were Taoiseach and leader of Fine Gael, is that correct?

A. Well, I was Taoiseach up until the time

Q. You were Taoiseach and at certain times a leader of Fine Gael

A. Well, at all of the times material, but wasn't Taoiseach all the time.

Q. You go on the first page of your memorandum to deal with the second mobile licence, and I don't want to deal with that at the moment, because what the Tribunal is inquiring into at this stage is in fact the money trail aspect of matters. We can come back to that at some other stage. Do you understand me?

A. Yes, I do.

Q. I think, just at the conclusion of that portion of your memorandum under the heading "Second mobile licence", you have informed the Tribunal that you believe that at some stage after the granting of the second mobile licence you spoke with the Party General Secretary, Jim Miley, advising against the acceptance of significant donations by the Party from ESAT Digifone interests in circumstances where a linkage might be made with the award of the licence, isn't that correct?

A. That's what I said, yes.

Q. And can I take it that what your concern there was a

political concern, is that correct?

A. Yes.

Q. That the proximity of the announcement of the award and the receiving of a significant donation?

A. My concern was simply with the possible misconstruction or misrepresentation of the existence of a donation.

I was of the view that the process whereby the licence had been granted was one which was entirely immune from political influence of any kind, that was and remains my view, but I felt, in the light of the fact that there had been some press comment about a donation in the context of the Wicklow by-election prior to the decision, that we should be exceptionally careful in the receipt of such donations, lest such donations might be misconstrued or misrepresented. And I believe I conveyed that view to the then General Secretary.

Q. And I think, then turning to deal with the New York event, I think you have informed the Tribunal that,

"The Fine Gael fundraising event took place in New York in November 1995. It was organised by David Austin and a number of people in conjunction with, and with the logistical backup of Fine Gael headquarters.

Letters of invitation were prepared and sent out by Fine Gael headquarters. David Austin was not a trustee of the Party, but I believe in the past he had assisted in fundraising activities."

Now, if I might just pause there for a moment,

Mr. Bruton. I think you heard my colleague,
Mr. Healy, ask Mr. Miley, just before you gave
evidence: "Mr. Austin wasn't a major fundraiser of the
Party, would that be a fair way "

A. That would be a very fair way of putting it. I
think and that to some extent is as a result of
researches I have been doing even since I prepared this
statement for the Tribunal. I think the situation was
that David Austin had assisted in one or two golf
classics, quite successful golf classics run by the
Party, notably one in the K-Club, which is associated
with his then employer, and it was probably in the
context of his involvement with that, that he came up
with the idea that a fundraiser in New York might be
organised. That is an idea that the Party itself
independently might have thought of at other times but
not pursued.

Q. Now, I think you continue in your memorandum and you
inform the Tribunal, "I do not believe David Austin was
asked for the purpose of the function to accept money
on behalf of Fine Gael. I am advised that payment in
respect of the function was made to either Fine Gael or
Friends of Fine Gael, and I understand that a bank
account was set up in New York for the purpose under
the name of Friends of Fine Gael."

Now, I think that is correct. A bank account was set

up, isn't that correct?

A. Yes, I believe so.

Q. And I think you may have been present when Mr. Miley gave evidence either yesterday or today about the requirements, the legal requirements when a fundraising event is taking place in the United States, certain returns have to be made within a six-month period and matters of that nature?

A. Yes. And I would have been aware of that in general terms even at the time that the function was being organised.

Q. I think you have informed the Tribunal that David Austin was not then and has never been a trustee of Fine Gael. Insofar as you can verify from Fine Gael records, neither ESAT/Telenor nor Denis O'Brien were invited to the function. Can I just ask you there, if we go back to the beginning of the function again. The carrot that was being offered to attend the function was to have dinner with you, was that you were Taoiseach, that you'd be present. Apart from being present for the function, did you have any personal involvement in the organisation of this function at all?

A. No, I didn't, except that I see in one of the documents that you have had before you, suggests that I was the conduit for some information to the effect that one particular prospective attendee was not attending. I

have no reason to dispute that documentary evidence, but I don't remember being involved in any way other than attending the function, making arrangements to attend it, agreeing in broad terms to the fact that such a function would go ahead, and fitting it into my diary, so to speak.

Q. Now, I think you did attend the function?

A. I did.

Q. And we have seen the records in relation to receipts from the function and the expenses and matters of that nature. That was all handled by Mr. Miley's end of things, would that be correct, in Fine Gael headquarters?

A. Well, I think that it was handled between Mr. Miley and the Fine Gael headquarters who would have been, I think, the prepareers and issueers of the letters of invitation and doing some of the follow-up, but also I think David Austin's office was involved. I think there was one other individual, whose name appears in some of the records, who would have been involved. I think there was a committee of some kind established to organise this function. Now, I suggest that this is information that has come to my knowledge in recent times. I wasn't aware of the detailed arrangements at the time.

Q. I understand, Mr. Bruton. You have been examining the documentation and coming to an understanding of the

matter?

A. Yes.

Q. Now, I take it, when you attended the function, it's clear there were no ESAT Digifone interests present, either in the form of ESAT itself, Mr. Denis O'Brien, or Telenor at the dinner?

A. That's right.

Q. And it's also clear, from the documentary evidence that you have looked at, that none of those entities were either a target or recorded as having made a commitment or of having paid anything to the Fine Gael Party or to Friends of Fine Gael through the account opened in New York?

A. That's correct.

Q. And of course that would have accorded with your own view of how things should have been done, isn't that correct, that you had, prior to that, informed Mr. Miley, because this was in close proximity to the announcement of the award of the licence, that no substantial donation should be accepted at that time?

A. I am not certain about that in terms of the timing. I think it's possible that my conversation with Mr. Miley took place after the function.

Q. After the function?

A. I think it would probably have arisen in the context of newspaper publicity about the Wicklow event. I am not sure when that newspaper publicity occurred, and I

think it probably was that publicity that prompted me to speak to Mr. Miley. And I haven't, I have to say, in preparation for this appearance, checked back on exactly the dates to help me identify when I would have had the conversation with Mr. Miley, but it is possible that the conversation I had with Mr. Miley was after the function rather than before. But I don't know for sure.

Q. Right. Now, I think that sometime after the function you had a telephone conversation with David Austin, isn't that correct?

A. Yes. I believe that that was on at the end of February.

Q. 1996?

A. Yes, I think it was. I have tried to identify the most likely date by looking at circumstantial material that's available to me, and I would put the date 24th February on it, which is a Saturday. I can explain to the Tribunal the reasons why I have reached that deduction.

Q. Well, unless it needs to be gone into in great detail, I don't intend to do it at this stage, Mr. Bruton.

A. It is somewhat material to the circumstances in which I had the conversation.

Q. Very good. If you wish

A. My absorption, shall we say, of the implications of the conversation were influenced by the events that were

otherwise occurring in my responsibility at the time.

Q. Perhaps if you yourself would explain the exact circumstances.

A. My belief is that this conversation took place on the 24th February, because on Friday, 23rd February, 1996, my diary, which I have had access to, shows that I was to have had a lunch with David Austin in Government Buildings. Now, I am certain that that lunch never took place. I have, however, checked what I was doing that day, which would explain to me why that lunch would not have taken place on that particular day, and why I would have had to make other arrangements to respond to Mr. Austin's request to speak to me.

On that particular day I was involved in an effort to get agreement from the British government, through its Prime Minister, to the setting of a date for a summit at which a date would be set, a fixed date, for all party talks in Northern Ireland. That summit actually did take place on the 28th February, the following Wednesday. But on that day, the 23rd, which is the day that I would otherwise have met David Austin, I had discussions with both Prime Minister John Major and with then President Bill Clinton about the issue. In particular, in the case of President Clinton, getting acceptance from the nationalist community about the notion of an election as one of the ways in which one might open the door towards bringing Unionists into the

talks and in the context of the unionist community, my conversation would have been with Prime Minister Major in terms of getting a commitment to a fixed date, because the Republican community were concerned that there must be a fixed date. They didn't want postponement.

This was also a matter of very considerable urgency at that time. In fact, I have had the opportunity of reading the Irish Times of earlier that week which described me as being in the position of being engaged at that very time in the most complex negotiations ever undertaken by an Irish government. I think that's hyperbola, but that was the term they used. It was a very difficult time. There were peace marches that weekend as well. I had discussions that weekend as well from my home, I think, with possibly from my office, I am not sure about that, with John Major again on the Sunday, and with John Hume on the Sunday, and there was a march, a peace march which I attended on the Sunday in Dunboyne.

So I believe that the conversation took place with David Austin on the Saturday. I believe that this conversation was in lieu, so to speak, of the lunch that I was offering him which couldn't take place for the reasons I have explained. And well, I had the conversation in that circumstance. I hadn't prior

notice from him of the subject matter that he was wishing to raise with me. From my point of view, I was agreeing to the lunch, and then to the conversation, mainly to thank him for his involvement the previous year in the New York fundraiser. I hadn't had many opportunities to speak to him in the interim and wanted to express my thanks because he had made a very considerable effort in that regard.

Q. So the purpose of you were extremely busy, obviously, but the purpose of the lunch, as first proposed was, this was just to say thanks for

A. That would be my recollection, yes.

Q. For doing something

A. Obviously, I can't there is no other there is no evidence available to me to verify what I have just said, but that would be my understanding.

Q. Could I just raise an issue here, and that you deal with it as we bring it up. I think Mr. Austin was some sort of a relation of yours as well, isn't that correct?

A. Well, David Austin's father and my grandmother would have been cousins. I am not quite sure whether that would be first or second cousins. My grandmother is an Austin and she is long dead, died before I was born, in fact. But I didn't have any contact at all with David Austin through the family. I never met him in my youth, so to speak, or any family event of any kind.

My only connection or contact with David Austin was either through politics or through his business interests where he would have I would have interacted with him, not all that frequently, but on one or two occasions. But he is technically a relative in the genealogical sense.

Q. Now, I think when you had the phone conversation with Mr. Austin, which you believe was on Saturday, 24th February, 1996, can you remember whether it was Mr. Austin made contact as a result of being told to do so, or whether you made contact with him?

A. I really can't, actually. I imagine that what happened was, but again I am not certain, is that when we, i.e. the Taoiseach's office, it wouldn't have been myself personally, had to tell him that, sorry, the lunch was cancelled, he must have indicated that he did want to talk to me anyway. And I assume, therefore, that a phone conversation from my home, where I would be the following day, was offered, either by me with my consent or without my consent, I don't know, probably with my consent, and I agreed to it. Whether, you know, who actually dialled the number first, whether I gave him my number or he gave me his number, I don't know. I think it's more likely that he rang me because I remember not being in a position where I could take notes of what he said, and that would tend to suggest that the call came at a time when I wasn't

actually sitting down prepared for it. But again, I am not sure, and I don't think it is perhaps very material, because in any event I had agreed to the conversation. Whether I initiated it or not, I had agreed to it in advance.

Q. Now, I think you informed the Tribunal you do not know how long the phone conversation was. There would, you assume, have been some social chit-chat which would have taken up some bit of the time of the telephone call?

A. Yes.

Q. I think you then informed the Tribunal that, "He told me that there was money available from ESAT Digifone interests for Fine Gael. I think he mentioned Denis O'Brien by name, but cannot be sure of that. I do not think he mentioned an amount. I did not probe the issue of the exact identity of the donor beyond the fact that it was associated with ESAT Digifone, nor the nature of any contacts Mr. Austin would have had with those involved in the donation."

I think you have informed the Tribunal that, "My overriding concern and response to Mr. Austin was that a donation be not made to Fine Gael from that quarter at that time. I felt that Fine Gael should not accept this money from that quarter so soon after the issue of the second mobile licence, although the donation was,

as such, neither illegal nor wrong. Mr. Austin was very keen that Fine Gael accept the donation and pressed me to do so. I believe that there was some mention of the money being in a bank account. David Austin may have said something like, "It is there for you in a bank account." You did not focus in on this. You further informed the Tribunal that you were overriding the concern that Fine Gael should not accept it because coming so soon after the award of the second mobile licence it was liable to be misconstrued or misrepresented. You believe the money to be still under the donor's control, not Mr. Austin's, and sought to convey, without causing offence either to the donor or Mr. Austin, that you believed that Fine Gael should not accept the donation at that time, but did not wish to rule out any donation for all times from the donor once it was no longer open to be misconstrued. You worked on the assumption that the money was still under the donor's control because Mr. Austin was not a trustee of Fine Gael and has never been and was not a treasurer of any unit of the Party, and therefore did not have an agency or authority to accept substantial donations on behalf of the Party.

Your entire focus was on conveying to David Austin, without causing offence, that you did not want the money given to Fine Gael, and this is what you mean by the phrase you used, "Leave it where it is." This

particular language might also have been used because you would also have been anxious not to convey the impression, either to Mr. Austin or to the donor, that a donation from this donor was in any other circumstances unacceptable.

In your conversation with David Austin, you did not authorise him to accept this money on behalf of Fine Gael, nor did he say to you that he had accepted the money on behalf of Fine Gael. You assumed afterwards that either the projected donation would be dropped altogether because of your strongly expressed concerns or at the very most, that there would be further consultation with you again by David Austin or the donor before any donation from that source would be attempted. You also assumed that after your conversation, Mr. Austin would have explained to the donor your reluctance that Fine Gael accept this cheque and why. You believe you did not consult with anyone in Fine Gael afterwards about this particular conversation. You had and have no notes of the conversation.

The end of February, 1998, was a particularly busy period with the breakdown of the ceasefire and foreign travel commitments. You did not hear from Mr. Austin further on the topic, although you did have one or two social conversations by phone during his subsequent

illness. The phrase "Leave it where it is" that you had used did, however, stick in your mind. And when the Telenor people told their story to Fine Gael in 1998, you thought immediately of your conversation with Mr. Austin and realised that the ambiguity of that phrase could have contributed to what Telenor had told you that is Fine Gael had happened. That is why you specifically drew attention to the phrase in the brief given to Mr. Nugent for the preparation of his opinion.

It would now appear that Mr. Austin decided that to overcome your concerns, he would, of his own accord, accept the money and pass it on to Fine Gael as if it were a personal donation from himself. You never agreed to or suggested such a course at the time of your conversation with Mr. Austin or at any time. It would not have been acceptable to you, as you believe the source of any donation should be clear and transparent to the Party.

Now, if I might just go back, Mr. Bruton, to the conversation you had with Mr. Austin on the date you believe to be the 24th February of 1996. Did Mr. Austin, when he informed you that there was the potential for a donation from ESAT Digifone interests, make any reference to the New York fundraiser at that time?

A. I don't know. I am sure there must have been a reference to the New York fundraiser in the course of the conversation, because if, as it is my recollection, I was intent on expressing thanks to him for that, I presume it would have come up in that context anyway.

I don't know. I could only speculate as to what he might have said. But I really don't have any recollection of what he said in terms of connecting or not, this proffered donation to the fundraiser. He may have said that in the course of working on the fundraiser he had come to be aware that such a donation from such a source might be available or was available, but I don't I mean, I don't have a sufficiently good recall of the conversation to be able to say what he said. And as I say, I did not have a note of it and don't have a note of it.

Q. Well, I understand that the purpose of the lunch was to thank him for his involvement?

A. That's my

Q. Understanding

A. recollection of it, but again, you know, that's my recall of what would have been the motive. I am not able to quite distinguish between whether that's a sort of retrospective rationalisation of it or whether, because I am dealing with events that took place some time ago and it was only when I saw this lunch appointment which I knew didn't actually happen in my

diary, that I started to think.

Q. That you could try and fix the time, the date of the telephone call. Can I ask you, because this is of significance for the inquiry being conducted by the Tribunal, Mr. Bruton. When you say that it may be a retrospective rationalisation because of what you now know and matters which have been brought to your attention that the purpose of the lunch was to thank him for the fundraiser, do you have any recollection of Mr. Austin referring to the New York fundraiser in the telephone conversation he had with you?

A. I don't have a recollection of it, but I would not be surprised if he did.

Q. Very good.

A. I am sorry I can be no more precise than that.

Q. I understand. Now, if he mentioned it, you can perfectly understand it in the context of maybe the social chit-chat you had and thanking him for doing all he had done in respect of the New York fundraiser; would you agree?

A. Yes.

Q. Now, what I am trying to zone in on, then, is that Mr. Austin then said that, if I can and of course these are not his exact words, this is your attempt recollection. He told you that there was money available from ESAT Digifone interests for Fine Gael.

"I think he mentioned Denis O'Brien by name, but cannot

be sure of that. I do not think he mentioned an amount."

Now, do you remember him mentioning the New York fundraiser in the context of money being available from ESAT Digifone interests?

A. Well, as I said in my earlier in an earlier response to one of your questions, while I don't have a recollection that I can stand over of the content of what David Austin said to me, my best guess would be that he said that he came across the availability or potential availability of this donation in the course of his efforts to make a success of the New York fundraiser. That would be my best guess of what would have been said. I would have to say I think that the nature of the donation, the fact that it was being offered after the fundraiser was all over, and was not of an amount related to the subscription being sought, would suggest that it wasn't a donation towards that particular fundraiser as such, but rather a donation which he had discovered might be available in the context of his general efforts in regard to that.

Q. On behalf of the Party?

A. Yes. Yes.

Q. Now, did Mr. Austin, or do you remember if Mr. Austin mentioned Telenor at that stage?

A. I don't know. I don't think the name "Telenor" would

have meant very much to me at that stage. This may seem odd in retrospect, now that we are all so familiar with all of these names and all of the people that were involved in the consortia. I wouldn't probably have known who was involved in the successful consortium other than I think the name Denis O'Brien had lodged in my consciousness as an individual who was involved.

And the name "ESAT" had lodged in my consciousness because that name was the name, ESAT Digifone was the name of the successful licencee. But the name Telenor wouldn't have necessarily meant anything, so it could easily have been mentioned, or for that matter it mightn't have been mentioned, and it wouldn't have stuck in my mind. What I did certainly register very strongly was that this was a donation coming from interests who were involved in the successful bid, and I immediately felt that coming so soon after the it had been successful, that such a donation, the principal, or the largest of the Parties in government, would just not be the right thing to do. It would be open to misconstruction and misrepresentation, even though I was of the view and am still of the view that it was perfectly legal.

It wasn't improper in the sense that it didn't influence the decision, because it was something that was being offered after the decision was already taken, but I felt that notwithstanding it not being in any way

improper, that it was inappropriate from the point of view of perception or possible misrepresentation. And that was what I tried to convey to David Austin. I don't think that David Austin saw it that way when I spoke to him. I would have had some difficulty, I think, in getting him to register this concern on my part, and I think that my main effort in the conversation would have been taken up in trying to convey that message to him, while at the same time not insulting him, not suggesting to him that he was either a naive person or a person whose motives I suspected for the fact that he had been involved in looking for this donation. So I was trying to, if you like, combine a soft letdown of David Austin with a position that was firm in regard to not accepting the donation.

Q. Well, you were the practitioners of the art of politics and you had to make the judgement, the political judgement in relation to this, which you did

A. And I would say that this was not something that I expected to be doing when I lifted the phone. I didn't know that this was the topic I was going to be asked to deal with because I hadn't any notice of the topic. And it was not a situation that I had found myself in before. I don't recall any other occasion in my time as Party Leader where I had to actually say to anybody that I didn't want a donation accepted at a particular time.

Q. Now, I think you believe that Mr. Austin I think you believe that Mr. Austin may have said something to you like, in the course of your conversation, "It is there for you in a bank account" or words to that effect.

Would that be correct?

A. Yes. I can't be really sure about that.

Q. And you weren't sure, or I think the impression you had, that it was in a bank account of the donor or the potential donor rather than in a Mr. Austin account or in a Fine Gael account?

A. Well, I would have been of the impression, so to speak, that it would have been set aside in a bank account for the purpose of being the source of a donation to be made to Fine Gael; that it wasn't, so to speak, in the general account of the donor, that it had been set aside in some fashion for this purpose. That's as far as I really went into it. I didn't examine David Austin about, you know, exactly whose bank account it was in, was it in a bank account in, you know, his name or in their name or in someone else's name. But I was of the view that whatever account it was in, it was under the control and at the discretion of the ultimate donor, and that they had control of what would happen to it, and that my conversation with him would be conveyed back to them so that they could draw the conclusions from it.

Q. Now, I am not asking I am not inquiring at this

stage as to what inquiries you were making, Mr. Bruton.

What I would like to know, if you can assist the Tribunal as to what Mr. Austin may have had told you and did not tell you. Can we be sure of this:

Mr. Austin did not tell you that the money was in an account of his in an offshore account in Jersey, did he?

A. I don't think there was any mention of an offshore account or of Jersey. I cannot be absolutely certain that he didn't say that it was in an account of his.

I can't be absolutely certain that he didn't say that.

He could have done. But I would have been acting on the assumption that whatever account it was in, for whatever purpose, it was there under the control of the donor, and that anything that Mr. Austin was doing in regard to that money was at the discretion of and under the control of the donor and that it was the donor's money. They owned it, they controlled it, and that they would be informed of my concerns as expressed to him.

Q. Well, you'd be fairly sure he didn't mention an offshore account, would you?

A. I don't think he did. I mean, I don't know that the term "offshore," in any event, would have any particular relevance in this circumstance. David Austin himself lived offshore, as far as I understand it. The function in question had taken place in the

United States, so I don't know that the term that the location of the account in terms of the address of the bank and whether that was in this jurisdiction or another would have been a particular topic of interest to me.

Q. Of interest or of concern?

A. Of either.

Q. It wouldn't have been of concern to you either, do you think?

A. Well, if Mr. Austin himself was offshore or if the company was offshore, as is the case in both instances, I assume that any bank account which was under the control of the company would have been offshore or that any account that Mr. Austin would have had would also have been. But I didn't go into this at all.

Q. You see, I am trying to ascertain what was actually discussed between you. I don't necessarily want to enter into a debate with you as to whether you should or should not have been concerned that monies which were purported to be held for and on behalf of the Fine Gael Party being held offshore and out of scrutiny of regulatory authorities here should have caused concern. That is not the issue I wish to ask you about. What I want to ask you about is what actual discussion took place with Mr. Austin at this time. You think that he may have said that he had it in an account in his own name, wherever it was?

A. He may have. I don't recall him saying that, but he may have said it. As I said in my statement to you, I wasn't focusing particularly on what actual account it was in, because I know money can be moved easily from one account to another. I was concerned in conveying to him that I didn't want a donation made, and I was acting on the assumption at all times that the money was under the control of the donor, and whatever account it was in and wherever that account was, I didn't focus in at all on the location of the account. And therefore I mention my concern about it solely to indicate to you that sorry, my lack of concern, I mention my lack of concern about it solely to indicate to you that because it was not a matter of concern to me, therefore, it was not something that I would greatly remember.

Q. Of course, because you didn't want it. That's the bottom line on this. You didn't want it.

A. Yes, that's right.

Q. And you clearly indicated that to Mr. Austin. I am just trying to find out from you if Mr. Austin told you anything else which would be of assistance to the Tribunal in the light of other matters which have emerged in the evidence at the Tribunal, and I don't think that you can be of any great assistance in terms of actual recollection in respect of those matters, would that be right, of what was discussed between

yourself and David Austin?

A. What other matters are you referring to?

Q. Did Mr. Austin tell you that he had raised an invoice with anybody about it?

A. No.

Q. Did Mr. Austin tell you that he had sent a letter to anybody effectively acknowledging this money?

A. No.

Q. Okay. Now, I think you say that you worked on the assumption that the money was still under the donor's control because Mr. Austin wasn't a Trustee and was never a Treasurer, and I think that is correct. He never held any financial position in Fine Gael or

A. He didn't have authority to accept money on behalf of Fine Gael, either in the context of the New York function or otherwise. There were arrangements in place for the receipt by Fine Gael of such monies and they didn't include paying them into accounts in the name of David Austin.

Q. Now, perfectly understandably, you didn't you first of all wanted to let David Austin down gently in relation to the matter and also, understandably, you did not want to exclude Fine Gael from receiving contributions in the future from the potential donor in this case. And as far as you were concerned, after you spoke to David Austin, that was the end of it, until matters arose in 1998, when Telenor approached

Fine Gael, isn't that correct?

A. That's right.

Q. And I think it's correct that you knew nothing about David Austin making the contribution to Fine Gael in the run-up to the General Election in 1997, until the matter arose in 1998?

A. I was not aware of that contribution in the name of David Austin to Fine Gael in the run-up to the General Election of 1997.

Q. And I think that when the matter was brought to the attention of Fine Gael by Telenor in 1998, and Mr. Miley brought it to your attention, even before he had completed all inquiries and taken a final position, but just understood the general nature of how this particular donation had been received by Mr. Austin, your initial reaction was just give that money back. You didn't want it for Fine Gael, isn't that correct?

A. Yes. Sorry, my mind wandered just for a second there.

Q. When Telenor brought it to the attention of Fine Gael and explained to Fine Gael their understanding of the whole matter, and how the donation had been received by Mr. Austin and the circumstances whereby it had been paid into an account in Jersey, and Mr. Miley then was able to ascertain that the money that came in from Mr. Austin through an Irish account was equivalent to the Telenor donation, your instructions at that stage was to immediately give that money back?

A. Yes. Yes. I don't think that I necessarily waited for Mr. Miley to go into all of the details

Q. I understand that

A. about the journey that this money had undertaken. Once I heard of David Austin and the amount or not the amount, because I wasn't aware of the amount, but once I heard of David Austin and ESAT, or ESAT interests, I did recall the conversation that I had had, and I immediately suggested that this money should be given back, because in my mind particularly, I felt that there had been something of a slight of hand insofar as my clear message to David Austin was that that money should not be paid to Fine Gael. And my understanding was that if there was ever any question of that donor paying to Fine Gael, that I would be approached about it again. I wasn't. And I was upset to discover that in fact that had been circumvented by the method of a personal donation in the name of someone other than the original source of the donation.

Q. And I think in fairness, Mr. Bruton, it was you who informed Mr. Miley of the expression "Leave it where it is" or "Leave it where it was," and you are the source of information in relation to that expression?

A. Yes. And you might ask me why I remembered that particular phrase? The reason I remembered it probably is that after the conversation was over, I had

a consciousness that it wasn't perhaps the best phrase to have used, that it was a phrase that had a measure of ambiguity about it, and that's why that phrase of mine, if you like, stuck in my mind, rather than other things that occurred in the conversation. And you know, in retrospect, I am sure I could have found another phrase to use, but as I say, this was a conversation that took place without notice and without prior deliberation and in circumstances I have explained.

Q. Now, I think the first consideration that you had and that Fine Gael had, or Fine Gael through you had when Mr. Austin spoke to you in February of 1996, was that you didn't want a donation from the ESAT Digifone interests for political reasons connected with the proximity of the announcement of the award of the licence. Now and that was also your view when Mr. Miley brought the issue up with you in 1998, when Telenor made the approach to Fine Gael, you were still of the view that this was the same, this was the same money that Mr. Austin was talking about. But as Mr. Miley progressed his inquiries, I think other information came to light of the money being paid to Mr. Austin by Telenor on foot of an invoice from Mr. Austin for consultancy work. I don't think Fine Gael had the invoice at the time that information was made available, and it has emerged subsequently that

Mr. Austin wrote a letter effectively acknowledging receipt of the money on behalf of Fine Gael, I suppose, and it has also emerged now that Mr. Johansen, who was the head man of Telenor in the dealings with Mr. Austin, had a little note of a conversation he had with Mr. Austin on the telephone, when he was informed that the donation would be acknowledged, that it would be brought to the attention of you and Mr. Lowry. I think you have now seen all that documentation, isn't that correct?

A. I have seen some of it. I saw the Post-it in the newspapers.

Q. Now, I think of course, none of those documents were available to you or Mr. Miley at the time when Mr. Miley was conducting his inquiries and seeking legal opinion, isn't that correct?

A. Sorry, I don't know. I mean, you went down through a list of documents. I don't think the documents were available to him. I'd prefer if you relied on what Mr. Miley said about that now.

Q. As far as you were concerned you heard Mr. Miley give his evidence about that?

A. Yes.

Q. You had no further information over and above what Mr. Miley had?

A. No, no. No, certainly not.

Q. And when legal opinion was sought, it was sought on the

basis of the information which was available to Fine Gael through Mr. Miley?

A. Yes, and I wouldn't, I have to say, at that time, have gone in in any great detail to these issues about invoices and that sort of thing, because basically, as far as I was concerned, that was being dealt with by the General Secretary, in conjunction with our legal advisers. I had made the basic policy decision that we wanted to give the money back, and that was really having made that decision, I left it to them. So I didn't follow in any detail all the information that they were receiving in the course of their various meetings and correspondence.

Q. And I think perhaps there is no need to ask you what your view of now, if I might just clarify one matter. And if I could bring you back to the nomenclature offshore. Mr. Austin lived in various places. He lived in Dublin on occasions, he lived in London, and he lived in France. The term "offshore" tends to be used, usually refers to a destination, normally a low tax destination, where information is not readily available to regulatory authorities outside of those particular destinations. So it's in that context I wish to ask you a question about offshore.

In statements which have been issued, it has been suggested that there was nothing particularly unusual

about Mr. Austin having an account in Jersey, being an offshore account, and I am not suggesting that there was. But Mr. Austin never lived in Jersey, did he, to the best of your knowledge?

A. I don't know where well, I don't believe that the term "offshore" was mentioned in the course of my conversation with David Austin.

Q. I see.

A. I don't believe that the location Jersey was mentioned.

I don't believe the issue of whether or not this was an account held which was readily accessible to Revenue authorities, in a location where accounts were readily accessible to Revenue authorities or

Q. Regulatory authorities

A. Regulatory

Q. As opposed to Revenue.

A. Or otherwise. I don't think anything of that was mentioned in the conversation at all. It wasn't something that I would have had any recall about. I don't believe it was mentioned. You brought up the term "offshore" in the course of your questions.

So

Q. Sorry, Mr. Bruton, I think in statements which were issued to the media around the time I am not taking this up as being any great issue at all. I just want to establish, to the best of your knowledge, Mr. Austin lived at various times in Dublin, London, or France.

He didn't live in Jersey, to the best of your

knowledge, did he, ever?

A. Well, I don't know. I really didn't know David Austin

well enough to say that. As to where he lived, I am

sure that's ascertainable readily by the Tribunal from

other sources, but it is not a subject that came up or

the context in which you have placed it didn't come up

in the course of the conversation.

Q. That's all I am trying to establish.

A. There was no question that

Q. That's all I am trying to establish. It did not come

up in the context of your conversation.

A. No.

Q. Thank you Mr. Bruton.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Just one or two questions, Mr. Bruton.

You indicated that when you were speaking to

Mr. Austin, you explained your concerns regarding the

monies that were available from the ESAT Digifone

interests: they were the proximity to the grant of the

licence. They would have been part of the concerns?

A. I think that was the entirety of my concern, really.

I wouldn't have been of the view that a donation from

that particular or company was in itself wrong, because

they were perfectly entitled to make donations if they

wanted to, or at least any of the companies involved.

I am not getting into who was the actual source of the donation. But I felt that given that the donor was part of a successful consortium, that to make a donation so soon afterwards would be open to misconstruction. Now, I recognise that this was confidential, but things that are confidential that doesn't mean that one shouldn't behave in a fashion that one would behave if it wasn't confidential, if you know what I mean.

Q. You were in a position you had to be very careful about these matters. No doubt about that.

A. Yes.

Q. No issue on the view you took at the time. The phrase "Leave it where it is" in this context, is it possible that Mr. Austin, in the light of your concerns about the proximity in time, might have construed the phrase "Leave it where it is" as one which gave him scope to let time go by and then send the donation? Now, of course, I know he sent it in his own name.

A. I think it is possible that he might have been able to be of that understanding. It wasn't my

Q. Rationalise it to himself

A. It wasn't my intention that he should. My intention was that any question of a donation from that source would be dealt with separately and that I would be informed about it. But one of the reasons I remember the phrase was, as I said in response to Mr. Coughlan,

was that I felt it was a phrase that was a bit ambiguous, and in the limited time I had afterwards to reflect, it obviously stuck in my mind because it was a bit ambiguous, but I never got to the point of being actually able to or having occasion to do anything further about it. I assumed that I'd hear about the matter if this particular donor or Mr. Austin wished to make the donation. I didn't hear about it and that's where matters rested.

Q. Thank you Mr. Bruton.

MR. MEENAN: I have no questions.

THE WITNESS WAS FURTHER EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Sorry, if I may just arising out of what My Friend just asked there. Can I just ask you. Of course, there is nothing wrong with receiving a donation from any appropriate source, Mr. Bruton, but what would your view be, or would you have a view that there would be anything inappropriate about receiving a donation from ESAT Digifone interests, if those interests wished the donation to be routed through Norway and the Channel Islands to ensure confidentiality?

A. Well, as long as the ultimate source of the donation was known to Fine Gael, and as long as there was nothing improper about the methods being used in terms

of breaking any regulations, and as long as the donation was not being offered in order to influence any decision. Then the particular route by which the donation might have been made wouldn't have been of particular concern to me, I think so long as the donor and the Party knew what was involved. Confidentiality is something that has been, until recently, a normal concern of people making political donations. It was a concern at that time. And protecting it was a legitimate concern at that time. Things have changed since. And that, of course, is a reality now.

Confidentiality is not something that people can maintain other than for small donations.

Q. So the test, am I correct in understanding you, that you might apply is that the recipient must know who it's coming from and the donor must know where it's going?

A. Yes. And there must be no illegality and no

Q. At both ends a judgement can be made from the point of view of legality, but also from the point of view of the ethics of the situation?

A. Correct. And I think that the issue of the ethics of a particular donation is a matter both for the recipient and the donor. It's not just a matter for the recipient, because the motive on both parts is relevant to determining that the donation is being made solely in the public interest and not for any

preferential motive.

Q. May I ask you this: From your own knowledge or from anything you have ever heard in Fine Gael, did David Austin ever do this type of thing before or since?

A. I have I do not believe he did. I have no knowledge of him ever having done so. David Austin well, I have already dealt with the comparatively limited involvement that he had in party fundraising in general terms.

Q. Now, as you are aware, this Tribunal has to look at the circumstances whereby payments are made so that if the movement of money is shrouded in secrecy or done in a way that's to ensure total confidentiality, it does make it hard for any type of regulatory authority to look at the matter, doesn't it, and the circumstances surrounding any particular payment?

A. Yes. Yes. And that's the reason why there have been changes in the legislation in order to ensure that the regulatory authorities could have greater oversight of both donations and government decisions.

Q. Thank you.

CHAIRMAN: In conclusion, Mr. Bruton, could I ask you just something that's almost completely unrelated, perhaps to save the trouble and having to trouble you on a future occasion. It was triggered when you mentioned at an early stage in your evidence, having

had access to your diary as Taoiseach in the context of checking the clash between the Austin lunch and the obviously vastly important summit discussions that you had with other national leaders. Was this the official Taoiseach's diary of the period or was it a personal diary of your own?

A. It was the official well, the official diary. As I recall my diary was kept, while I was Taoiseach, on a computer, which I could look at in my office. And when I left office, a large folder, not unlike the big folders you have there on the desks of the counsel, was given to me with all of the everything that was in the official diary for my time in office. Some of the things, of course, were in the diary that hadn't actually occurred because they weren't erased, as is the case here.

CHAIRMAN: Not, I hasten to say, in relation to your own period as Taoiseach, Mr. Bruton, but in general terms in the Tribunal inquiries, one suggestion that was made to us was to the effect that the diary of an individual holding the office of Taoiseach should be available for later public perusal. Would you have a view on that?

A. I don't think it would be a good idea, I must say. I am sorry to be offering comment on a matter that I haven't reflected upon, but it is the case that any public figure does have a private life, and there are

matters in that, such as family engagements, or any matter that might be included in it, that are legitimately private. But I have to say, you ask me that question, Sir, without notice, and I haven't reflected on it.

CHAIRMAN: I am entirely conscious of that. It can be taken up informally if needs be. Thanks very much for your attendance.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. John Fortune, please.

JOHN FORTUNE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Mr. Fortune, you have provided the Tribunal with a memorandum of your intended evidence, and I take it you have been here during the evidence of some other witnesses, and therefore you'll be aware that I'll take you through it. I may ask the odd question and clarify a few things at the end of it. Have you got a copy of the memorandum with you?

A. I do.

Q. You give your address, you say that you were a director of ESAT Digifone Limited, and that you were nominated to that role by Telenor Invest AS, which is now known as Telenor Communications AS. You say one of the roles

you had was to facilitate and improve communications between the Norwegian director of ESAT Digifone and the Irish director of ESAT Digifone. You say you were appointed a director on the 26th August, 1997, and that you ceased to be a director on the 3rd September, 1998.

Can you tell me what was your initial role? Was it in some specific executive capacity with a specific title?

A. I wasn't an executive director. I was a non-executive director of ESAT Digifone.

Q. But prior to being a director, did you have some specific executive role in ESAT Digifone?

A. No, none.

Q. What prompted ESAT and Telenor to hire you to facilitate and improve communications between them?

A. Well, ESAT didn't hire me. It had nothing to do with ESAT. Under the Shareholders' Agreement between the three owner ESAT Digifone, each had the right to appoint a number of directors, all of which were non-executive directors. Therefore, they had no operational role in the company whatsoever. ESAT Telecom appointed three, Telenor appointed three, and IIU appointed two. I was asked to go on the Board of ESAT Digifone by Telenor partly because of my experience of being an Executive Director and Chief Financial Officer of a NASDAQ listed company, which is CBT Systems, now called Martforce, and also because for 10 years I had investment banking experience. I had

just returned from America and had and I think probably at the time I was the only one in Ireland who had experience of the public company markets in the US as a Chief Financial Officer. And I had resigned from CBT for family reasons and come back to Ireland. So it was above a business experience background that I had that I brought to the post. At the time Telenor had three Norwegian based directors on the Board, and they felt that it would be more appropriate to have somebody local, who knew the business scene and knew the other shareholders in the company.

Q. I understand. You say that, in any case, your association with the company began on the 26th August, 1997, and ceased on the 3rd September 1998?

A. Mm-hmm, correct.

Q. You say, following on from that, that you were not a Director at the time of the donation by ESAT Digifone/Telenor of \$50,000 US to the Fine Gael Party either at the date of payment in December of 1995 or subsequently when David Austin transferred the funds to the Fine Gael Party in May of 1997.

Now, all those remarks are by way of an introduction.

You then go on to deal with a matter that was referred to in evidence of Mr. O'Brien yesterday, and that was the approach that Telenor made to Fine Gael to make further inquiries of Fine Gael concerning the payment from David Austin and specifically whether or not the

Fine Gael Party had received it, isn't that right?

A. Yes.

Q. And you had a role in the notification to the other two shareholders, IIU, Michael Walsh and Mr. Dermot Desmond, and Mr. Denis O'Brien of ESAT, concerning Telenor's intentions in that regard?

A. Yes.

Q. You say that shortly before the 11th February of 1998, probably on the 10th February, 1998, or thereabouts, you verbally informed Michael Walsh of IIU and Denis O'Brien of ESAT Telecom of the intention of Telenor to obtain confirmation directly from the Fine Gael Party that the donation was actually received by the Fine Gael Party. You say that you explained to Mr. Walsh and Mr. O'Brien that Telenor considered the handwritten letter from David Austin to be inadequate and that direct confirmation of receipt by Fine Gael of the donation was required by Telenor in order for Telenor to fully satisfy itself as to the position. Your recollection is that Mr. Walsh showed an immediate understanding of Telenor's wish to clear up this issue, but that Mr. O'Brien's response was initially negative. Your recollection is that Mr. O'Brien pointed out that because ESAT Digifone had paid the donation, it had reimbursed Telenor, ESAT Digifone should seek the confirmation from Fine Gael, not Telenor. You say that Mr. O'Brien was negative about any approach to the

Fine Gael Party. Mr. O'Brien volunteered that he would go to David Austin first and arrange for David Austin to obtain a response from the Secretary General of the Fine Gael Party. Mr. O'Brien proposed that he would contact David Austin, but he would wait for a short period for David Austin's availability because Mr. O'Brien confirmed that David Austin was undergoing chemotherapy at the time. Your response to Mr. O'Brien's suggestion was that you confirmed to Mr. O'Brien that it will be done, which is that Telenor must proceed with a direct inquiry from Fine Gael.

You confirm that you notified both Mr. Walsh and Mr. O'Brien of Telenor's intentions. You did not refer to a specific date by which a meeting would be held with the Fine Gael Party, because no such meeting had yet been arranged at the time, but you made it clear that the meeting with Fine Gael was to be held as soon as possible. You recollect a meeting on the morning of the 11th February, 1998, when you met with Kilroy's solicitors. As a result of that meeting, it was agreed that contact would be made with Fintan Drury of Drury Communications to set up a meeting with the Fine Gael Party as early as possible.

Later on the same day, you had a telephone conversation with Kilroy's solicitors. You had attempted to contact Mr. O'Brien earlier on the 11th but had

ascertained that he had taken a flight to New York.

You faxed the hotel in New York where Mr. O'Brien was staying to ask him to contact you, and you also left an urgent you also left an urgent and very specific message for Mr. O'Brien on his mobile phone. This message confirmed Telenor's intention to make immediate and direct contact with Fine Gael. You are unable to recollect whether Mr. O'Brien responded to the facts and to the urgent telephone call but you are satisfied you did everything possible to bring the matter to the attention of Mr. O'Brien.

Your recollection is that the meeting with Fine Gael was deferred from the 12th February, as had been proposed by Fine Gael, to late Friday evening, 13th, in order to enable contact to be made with Mr. O'Brien, notifying him of the precise time and date of the appointment. You also spoke again to Mr. Walsh on the afternoon of the 11th February stating that having discussed the matter with the legal advisers, Telenor had decided to have a meeting with Fine Gael to obtain confirmation from Fine Gael in relation to the receipt by Fine Gael of the donation. You say that you did not give a specific time and date for the meeting with Fine Gael, but that you made it clear that such a meeting was to be held expeditiously. You say that as a result of all of the foregoing, you are satisfied that Mr. O'Brien was certainly aware of the intentions

of Telenor to make contact with the Fine Gael Party, but that Mr. O'Brien may not have been aware of the precise time and date of such a meeting with the Fine Gael Party if he did not respond to your telephone call and fax.

You say you have not retained any records, notes or attendances of your telephone conversations, your faxes or your communications.

Can we take that last point first, because this was alluded to by Mr. O'Brien in his evidence. You say you have not retained any notes or attendances of your telephone conversations.

A. That's correct. I took notes at the time. The notes that form the basis for the memorandum that you have read out there are notes of conversations and meetings which I had with Telenor's lawyers in which I informed them on an hourly basis over those couple of days as to what I was doing and what was happening. And they took notes of my conversations with them.

Q. Well, can I just clarify this then: You made notes

A. Yes.

Q. of the various things that are mentioned here?

A. I always make notes of business conversations.

Q. You had contact with Telenor's lawyers, and you believe that they made notes?

A. They did make notes.

Q. And it's from their notes that you have put together this statement, is that right?

A. Absolutely. So they're contemporaneous notes taken by lawyers of conversations which I had with them.

Q. And where are your own notes?

A. My own notes are probably lost in an office move which happened subsequent to the time of that conversation.

Q. When was that? Oh, you mean subsequent to 1998?

A. Yes.

Q. I see.

A. But on the basis that Telenor's lawyers had notes, I wasn't that concerned about retaining my own handwritten notes.

Q. I don't understand that. I thought your own handwritten notes were lost.

A. Well, they would have been lost, but I wasn't relying on them as the only record of the conversations which I had with Denis O'Brien and with Michael Walsh at the time.

Q. Are you saying that you were always aware, from the time that these events occurred, that Telenor's lawyers had their own notes?

A. Mm-hmm.

Q. And you are saying that you were always aware that you could rely on those notes?

A. I was aware from when I attended meetings in there to describe the events that you are talking about

there, I was there with two lawyers and another director of ESAT Digifone from Telenor, and the lawyers were taking notes of what I was saying. So I was aware they had those notes. I assume when I rang in, I think it was on the Thursday afternoon, and I was put on conference call, I would have assumed that they were taking notes of what I was telling them.

Q. But that had nothing to do with your losing your own notes. I am just trying to clarify. They are completely independent?

A. They are completely independent, yes.

Q. You say that your recollection is that you went to Mr. Walsh your recollection is that you went to Mr. Walsh, and Mr. Walsh showed an immediate understanding of Telenor's wish to clear up this issue of what had happened to the David Austin donation and whether it had gone to Fine Gael.

A. Yes.

Q. But that Mr. O'Brien's response was initially negative. Now, can I just ask you one question about this in relation to how you came to recall this. Is this based on your recollection, or is it based on some note that your lawyers made available of what you told them at the time?

A. The latter.

Q. So your lawyers have a note that confirms this?

A. Yes.

Q. I see. So you don't have a recollection of it?

A. Oh, I do have a recollection of it. I remember having a row with Denis O'Brien over the issue, and I remember Michael Walsh accepting that the route of the cheque left a lot of doubts in one's mind, which could only be satisfied by contacting the recipient, which in this case was Fine Gael.

Q. You say that Mr. O'Brien's response was initially negative. Is that a reference to the fact that subsequently he was, as you say, prepared to contact Fine Gael, as long as he made the contact?

A. Yes.

Q. You say that Mr. O'Brien pointed out that because ESAT Digifone had made the donation, they should seek the they should make the contact with Fine Gael, not Telenor?

A. Yes.

Q. And did you have a response to that? Did you say, I agree with that, or I don't agree with that, or had you some particular reason why you, Telenor, wished to make the contact yourselves?

A. Well, Telenor had written the cheque, and I was of the view, and Telenor's lawyers were of the view, that on the basis that they had written the cheque, that they needed to seek direct clarification from the recipient.

Q. Up to that time what you had was a clarification of some sort from the recipient of the cheque from

Telenor, i.e. Mr. Austin, isn't that right?

A. That's correct. But that was never sought by Telenor.

That was part of a wider discussion which was ongoing at the time of the IPO, of the ESAT Telecom, in relation to this contribution.

Q. And at that time, I think this was as much an issue as it was subsequently. It continued to be an issue, if you like, but the response at that time, in November of 1997, was to provide this document that we have seen on the overhead projector a few times, which I think you will see on the monitor in front of you now, was to provide that document from David Austin?

A. That's correct.

Q. Which merely confirms that he got a payment and that he paid it to Fine Gael. But doesn't confirm that Fine Gael

A. Received it.

Q. received it.

A. Yes. That letter, though, was produced in response to issues raised by ESAT Telecom and their Directors and advisers in relation to a public offering. As a Director of ESAT Digifone, I certainly felt I had an obligation to make sure that all of the facts relevant, which were in the knowledge of ESAT Digifone, were made available to the Directors of ESAT Telecom, because they were the ones who had the public flotation. I was additionally concerned that if information which

we, as directors had, were not available to them and subsequently became available, that investors in the IPO could effectively have an action against the Directors of ESAT Digifone. And in those circumstances, I would be personally liable, which wouldn't be a very clear place to be. And to a certain extent, more importantly, the two Telenor representatives, if they were liable for anything, would end up being an action against Telenor, who were the only people sitting around the table, really, with pockets worth billions.

Q. Well, just to clarify this, then. At the time of the IPO, ESAT Telecom and the Directors of ESAT Telecom took certain actions to satisfy themselves as Directors of ESAT Telecom, and they appear to have been satisfied with that, but you, qua Director of ESAT Digifone, were anxious to satisfy yourself as a Director of ESAT Digifone, ignoring the IPO, that this money had in fact gone to Fine Gael. And you persisted with, if you like, the inquiries which had been raised at that time, but resolved to some degree, to the satisfaction of ESAT Telecom, but not completely to the satisfaction of ESAT Digifone, would that be right?

A. To certain Directors of ESAT Digifone, because there were common Directors between the two companies.

Q. Well, things weren't resolved to your satisfaction

A. Not to my personal satisfaction as a Director of the

company.

Q. I understand Mr. O'Brien, you went on to say was negative about any approach to Fine Gael. Did that mean an approach by you or even by him?

A. No, it was by any approach, but I think in particular an approach over which he didn't have control, which was at the time, obviously, Telenor seeking clarification.

Q. Your response to Mr. O'Brien's suggestion was that you are going to do it. "Like it or not, we are going to find out from Fine Gael ourselves."

A. Correct.

Q. Which seems to me, and I am sure to everybody else, to have been the obvious solution to find out, did they get this money or not. Now, as we know, that document there is, in fact, on the face of it correct, Mr. Austin had forwarded the money to Fine Gael, but as we also know, Fine Gael would not have confirmed in 1997 that it was that Telenor or ESAT payment, because they wouldn't have known it?

A. I don't know the answer to that.

Q. They wouldn't have known it until you went to them and told them the facts?

A. That's correct. I am sorry, you are absolutely right.

Q. So that document confirmed certain things. It confirmed that a payment had been forwarded to Fine Gael, but the records of Fine Gael wouldn't have shown

it as the Telenor ESAT payment unless the additional information made available by you was brought to Fine Gael's attention?

A. Correct.

Q. Now, just one or two other matters. You say that Mr. Walsh was satisfied that this was an appropriate approach to take?

A. Mr. Walsh was understanding of the need for Telenor to go and seek this. I mean, I think, if you look at it from a non-political, but a corporate point of view, for a company to make a political donation for a fundraising event in New York via an offshore bank account made payable to a person was a pretty strange thing.

Q. I agree. There are an awful lot of questions along the way.

A. And from my perspective, as what I would call an independent non-executive director of the company, I felt that we and it was supported by Telenor corporately and by their lawyers and advisers, that we had no alternative. We had an obligation under the Shareholders' Agreement to tell ESAT Telecom and IIU of what we were doing, which is what effectively I was doing around the 11th to the 13th February.

Q. I understand. Now, I am going to come back to Mr. O'Brien's evidence in a moment. Can I just summarise it by saying that he doesn't agree that these

meetings took place?

A. They were telephone conversations.

Q. But before we go to those contacts but before we go to them, can I just mention one other matter. If you go to the second last page of your memorandum. You mention that you had a telephone conversation with Kilroy's, and you recall that you were informed, I think, that the meeting with Fine Gael was deferred from the 12th, as had been proposed by Fine Gael, to late Friday, on the 13th?

A. Mm-hmm.

Q. To enable contact to be made with Mr. O'Brien. You then spoke to Mr. Walsh on the afternoon of the 11th February.

A. Mm-hmm.

Q. Now, at that stage, did you not know the precise date that had been arranged for the meeting?

A. I don't think so, no. My recollection is that I told Michael that this meeting is going to have to be held as soon as possible and that it was but that could have meant, and I wouldn't have disagreed with Michael had he interpreted that to mean a week as opposed to the fact that it actually took place within two days.

Q. It's just the way, the place in your statement which you have positioned this statement. Initially it seemed to me that when you were speaking to Mr. Michael Walsh, you were aware that the meeting had been fixed

for the 13th. Can you understand how I could arrive at that conclusion, because it's after the section of your statement in which the meeting is fixed for the 13th.

A. I would have had two conversations, but this is the second conversation with Michael, so I would have been telling him the date of the meeting at that point in time, yes.

Q. Well, just to clarify this, in fairness both to Mr. Walsh and Mr. O'Brien. Let me go back, then, to the third paragraph of your statement on that day page: Later on the same day, the 11th, you had a telephone conversation with Kilroy's. You had attempted to contact Mr. O'Brien earlier on the 11th February, but had ascertained that he had taken a flight to New York.

You faxed the hotel.

A. Mm-hmm.

Q. You left a message.

A. Yeah.

Q. You go on to say, you recollect that the meeting with Fine Gael was deferred from the 12th. Were you aware at that meeting, that conference call on the 11th, that a meeting had been fixed for the 12th?

A. Yes. I am sorry, you are correct. I mean, the specific message that I would have left for Denis O'Brien would have to confirm the date of the meeting, and I would have said the same to Michael Walsh.

Q. Meaning that you would have said what date?

A. That it was taking place on the 13th.

Q. I see. Your contacts with Michael Walsh, were they by telephone or by meeting?

A. By telephone.

Q. And in the course of those telephone conversations, did you tell Mr. Walsh that Mr. O'Brien was negative about meetings with Fine Gael, and in particular any meetings between Fine Gael and Telenor?

A. I probably would have, yes.

Q. Now, Mr. O'Brien has said that it is not his recollection that you informed him on the 11th of what it was Telenor intended to do. And he said, "I have in my diary a meeting on the 11th, the morning of the 11th, which is a Sub-Committee of the Board of ESAT Digifone to discuss IT matters. He " meaning you "was a member of that committee because of his background, but I do not remember him saying that he was going off to talk to Fine Gael."

Now, firstly, do you remember a meeting around this time of a Sub-Committee of ESAT Digifone dealing with IT matters?

A. Well, there was a project, which if I recollect was called Project Gold, which was the implementation of a massive IT billing system within ESAT Digifone. There were meetings on a very regular basis, and I had been

nominated by the Board to attend these meetings. Most of those meetings were with executives within ESAT Digifone and were not meetings that included Denis O'Brien. So, unfortunately, I didn't look at my diary in relation to an IT meeting that day. I have those diaries, and I can always check

Q. Would you mind checking so that

A. Absolutely. I have no recollection of a meeting, but I mean, if one took place and Denis was there, it wouldn't have been just Denis and I. It would have been Denis and I with some of the senior managers within the company. Although, it would have been unusual for Denis to attend that meeting.

Q. What he is suggesting is I think that you would have had an opportunity to say it to him at that meeting and you didn't take that opportunity. But you can look into your own diary and check, did you attend any such meetings.

A. One doesn't always get an opportunity to say things at meetings like that. Denis had a habit of going in and going out blazing in and blazing out maybe.

Q. Yesterday, in the course of examination of Mr. O'Brien, Mr. Coughlan drew to Mr. O'Brien's attention the contents of this statement, and in particular your statement in which you stated that your recollection was that when you drew this matter to Mr. Walsh's attention, he showed an immediate understanding of

Telenor's wish to clear up the issue, but that

Mr. O'Brien's response was initially negative.

Mr. Coughlan asked Mr. O'Brien, "Do you have any recollection of that?" And he says "No, I don't."

Mr. Coughlan went on to say to Mr. O'Brien that you had made a statement in which you stated that you recollected that Mr. O'Brien pointed out that because ESAT Digifone had paid the donation, it having reimbursed Telenor, ESAT Digifone would seek confirmation from Fine Gael and not Telenor. And he was asked, did he remember that? And he said, "No, I don't." He went on to say that he noted that you had no notes of any of these meetings, and he didn't know how you could remember six years ago a fax or a phone call.

I think, essentially, the thrust of Mr. O'Brien's evidence is that, at the very best, he had no recollection of any such exchange or that no such exchange took place. What do you say to that?

A. Well, clearly it didn't it wasn't six years ago, it was February '98, which is not six years ago.

Secondly, I have attendance of meetings of both telephone conversations and meetings which I had with Telenor's lawyers at which I was informing them of what was happening in my discussions with both Michael Walsh and Denis O'Brien. And that statement comes directly from those attendance notes, so they are completely

contemporaneous with what was happening.

Q. Were you informing Telenor's lawyers, because this may be an issue in the context of getting these notes, as the representative of Telenor or for the purposes of getting legal advice?

A. It wouldn't have occurred to me to be doing it for

Q. I don't think there will be any objection to having those documents provided by Telenor's lawyers in due course. So you needn't worry about that technical question.

A. Okay.

Q. Thanks.

MR. FITZSIMONS: Just one question.

THE WITNESS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Fortune, in the course of his evidence yesterday, Mr. O'Brien mentioned on a number of occasions, or asserted on a number of occasions, and on one occasion I am sorry, I'll start again.

Mr. O'Brien yesterday, in the course of his evidence, when being asked about the Telenor actions taken to contact Fine Gael, he asserted that this was influenced by the fact that merger talks between Telenor and Telea were taking place. He also made the same assertion with regard to the phrase "due diligence" in one of Mr. Miley's handwritten notes, which referred to that process. I think you are in a

position to confirm that the merger talks between Telenor and Telea did not commence until almost one year later, namely, on the 20th January, 1999?

A. It was very much at the end of my period on the Board, which would have been late 1998, was the first time that Telenor/Telea merger talks were ever mentioned.

Q. Ever mentioned. Thank you very much.

CHAIRMAN: As I understand your evidence, Mr. Fortune, you have no prior connection or engagement with Telenor until you were effectively recruited to act as the catalyst, and also in view of your banking experience in America, but you were very much there as a catalyst between the Scandinavian and Irish executive interests.

A. Well, I mean, I am reluctant to agree with you, because a non-executive director has a very specific responsibility to act for the benefit of the business and its shareholders.

CHAIRMAN: Yes. I wasn't asking any loaded question. I was just taking it from your own statement, there was probably a feeling on the part of Telenor that having a relatively senior Irish officer on the Board made some sense.

A. I think it's been well documented, both in the IPO prospectus of ESAT Telecom and in the press, that there were difficulties between Telenor and ESAT Telecom in relation to the running and the management of ESAT

Digifone, and Telenor felt that part of that was, would be improved with the appointment of an Irish person on their behalf to the Board of ESAT Digifone.

CHAIRMAN: During the period of slightly over a year that you were involved, was the technical Telenor workforce in Dublin almost exclusively Norwegian?

A. I have no idea. There is no question that Telenor brought a huge amount of technical expertise in and indeed other operational expertise in the building of ESAT Digifone.

CHAIRMAN: Thank you for your attendance.

THE WITNESS THEN WITHDREW.

MR. HEALY: It occurs to me, Sir, that it might be better if the Tribunal were not to start tomorrow morning till about half past eleven, because there is an amount of material to be got ready before the Tribunal commences its work tomorrow.

CHAIRMAN: I think there may be a necessity for some brief further Opening Statement and there are further documents that still have to be considered this evening and tonight in that regard. I think it's also the case that perhaps one comparatively unwell witness is on standby, and perhaps might it make some sense if I made a late start, just a short time prior to lunch,

perhaps twelve o'clock, to facilitate the attendance of Mr. Conroy, and then we can see what progress can be made on the newer dimensions in the afternoon. Very good. Twelve o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 14TH JUNE 2001 AT 12 NOON: